

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

APPELLANT'S BRIEF AND JOINT APPENDIX

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10959

SISTO BISCEGLIA,

Appellant,

vs.

DEAN ACHESON, SECRETARY OF STATE,

Appellee

**APPEAL FROM THE JUDGMENT OF THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA**

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United States Court of Appeals
For the
District of Columbia Circuit

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QUESTIONS PRESENTED

1. Where the appellant, an American citizen of Italian origin returned to Italy and remained there from 1936 to 1949, and he denies that he applied for naturalization in Italy, and there is no evidence to show that he lost his nationality of origin or that he was naturalized in Italy, is a finding of expatriation by foreign naturalization erroneous where the only evidence to support it is the Italian Law that a former Italian may reacquire citizenship by two years residence in Italy and proof that appellant used an Italian Identity card which was available to Italians and Non-Italians alike?

2. Was appellant expatriated prior to 1940 by residence in Italy?

3. Are the findings of a Congressional Committee, specifically appointed to investigate nationality problems, admissible in evidence to show conditions which surrounded the Italian elections of 1946 in which Americans including appellant participated, and does the refusal to receive such findings in evidence constitute reversible error?

4. Was Appellant expatriated by voting in the elections of June 2, 1946 where it is established that he feared jail, loss of ration coupons, loss of civil rights, and denial of the right to return to the United States and was the finding of the court below erroneous?

5. Does voting in a local election in Italy for mayor on March 24, 1946 constitute a ground of expatriation or is it necessary that the voting be in a national election?

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**APPEAL FROM JUDGMENT OF THE UNITED
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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from an order of the District Court directing the entry of judgment for the appellee on January 8, 1951 and dismissing the complaint of appellant.

The appellant seeks a declaratory judgment pursuant to 8 U.S.C. 903 that he is a citizen of the United States. The

jurisdiction of the District Court was invoked under 8 U.S.C. 903 and this Court has jurisdiction of the appeal under 28 U.S.C. 1291.

STATEMENT OF THE CASE

The appellant testified and the District Court found that the appellant was born in Italy in 1894 and that he was naturalized as a citizen of the United States on May 21, 1920. (Jt. App. pp. 33, 37, 38.) He served in the United States Army during World War I and in 1936 he returned to Italy with an American passport which expired in 1937. (Jt. App. pp. 38, 39.) Appellant's return to Italy was for the purpose of curing a disability of his knees. (Jt. App. pp. 40, 57.) He sought an American passport in 1938 and again in 1940. The American consulates were not in operation in Italy during the war and subsequent to their reopening in 1945, application was again made for a passport on behalf of the appellant (Jt. App. pp. 43, 64-66). In 1947, the State Department ruled that the appellant had lost his American citizenship under Section 2 of the Act of March 2, 1907 (34 Stat. 1228; 8 U.S.C. 17) on the ground that he had become naturalized in Italy. (Jt. App. p. 67.)

Appellant delayed returning to the United States after 1938, in part, because he was unable to sell his property and take the proceeds with him. (Jt. App. p. 56.) Thereafter, the American consulates were closed during the war, and finally, the State Department refused to issue a passport on the ground that he had expatriated himself by Italian naturalization. (Jt. App. pp. 65-67.) In 1949, appellant returned to the United States. (Jt. App. p. 30.)

Appellant testified that he never applied for or secured Italian naturalization and no evidence whatsoever was introduced to establish that he acquired Italian nationality subsequent to his naturalization as an American citizen.

(Jt. App. pp. 46, 47.) Appellant testified that he was refused permission to cash interest-bearing bonds in 1941 because he was considered to be an American citizen by the Italians, that he refused to apply for Italian citizenship, and that as a result of his refusal to give up his American citizenship, he was ordered away from his home to a town where no military installations existed. (Jt. App. pp. 44-46.)

On March 24, 1946, appellant voted in an administrative election for mayor, and in fear that he might lose his civil rights and be sent to jail, he voted in the Italian political election of June 2, 1946. (Jt. App. pp. 48-50.) The District Court refused to receive in evidence a report of the House Immigration Committee which investigated and made finding with respect to these elections. (Jt. App. pp. 50-53 and Exhibit 7.)

On December 22, 1950, the District Court filed a memorandum opinion in which it directed dismissal of the complaint on the ground that the appellant had lost his citizenship by residence abroad and voting. The Court stated that appellant could have secured as good treatment in the United States and that his remaining abroad for baths was a mere subterfuge. Appellant's contention that he voted under duress was disallowed. (Jt. App. p. 31.) Thereafter, with appellant objecting, the court signed findings declaring that appellant had expatriated himself by foreign naturalization as well as by voting and residence abroad. (Jt. App. pp. 32-33.)

STATEMENT OF POINTS

The District Court erred:

1. In finding that the appellant had expatriated himself by foreign naturalization, voting, and residence abroad.
2. In refusing to admit in evidence and give probative weight to the findings of the House Immigration Committee contained in Appellant's Exhibit 7.

3. In dismissing the complaint herein and refusing to find that the appellant is a citizen of the United States.

STATUTES AND REGULATIONS

Section 2 of the Expatriation Act of March 2, 1907 (34 Stat. 1228; 8 U.S.C. 17) provides:

“That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state, it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however,* That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States under such rules and regulations as the Department of State may prescribe: *And provided also, that no American citizen shall be allowed to expatriate himself when this country is at war*”. (Italics supplied).

Subsequently Congress enacted Section 409 of the Nationality Act of 1940 (8 U.S.C. 809) which extended this presumption, originally for two years subsequent to October 14, 1940, and later to 6 years, i.e. to October 14, 1946 (59 Stat. 544). As amended, Section 409 (8 U.S.C. 809) presently provides:

“Nationality shall not be lost under the provisions of Section 404 or 407 of this Act until the expiration of six years following the date of the approval of this Act: *Provided, however,* that a naturalized person who shall have become subject to the presumption that he has ceased to be an American citizen as provided for in the second paragraph of section 2 of the Act of March 2, 1907 (34 Stat. 1228), and who shall not have overcome

it under the rules in effect immediately preceding the date of the approval of this Act, shall continue to be subject to such presumption for the period of six years following the date of the approval of this Act unless it is overcome during such period.

The regulations of the State Department issued under the aforesaid presumption which were promulgated on June 18, 1938 are set forth in III Hackworth Digest of International Law, p. 310, read as far as pertinent as follows:

“Naturalized citizens against whom the presumption of expatriation shall have arisen . . . may overcome such presumption upon presenting to a diplomatic or consular officer of the United States satisfactory evidence of any of the following facts:

• • • • •

“(b) That their residence abroad is in good faith for reasons of health or education in special subjects and that they intend eventually to return to the United States permanently to reside.

“(c) That some unforeseen and controlling exigency beyond their power to foresee has prevented their carrying out a bona fide intention to return to the United States within the time limited by law and that it is their intention to return and reside permanently in the United States immediately upon the removal of the preventing cause.

• • • • •

“(g) That they have made definite arrangements to return immediately to the United States permanently to reside.”

Section 401-e of the Nationality Act of 1940 (54 Stat. 1169; 8 U.S.C. 801-e) provides for the expatriation of American citizens by:

“Voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty over foreign territory;”

I

THE FINDING THAT APPELLANT WAS EXPATRIATED BY FOREIGN NATURALIZATION WAS ERRONEOUS

Appellant testified that he never applied or secured Italian naturalization, that he was not permitted to cash interest-bearing bonds in 1941 because the Italian government considered him an American and corroborative documentary proof was submitted to establish this fact. (Jt. App. pp. 44-47, 66.) Appellant refused to surrender his American citizenship and apply for Italian citizenship, and he was ordered out of his home and into another town where no military installations existed. (Jt. App. p. 46.)

Appellee's evidence consisted merely in the fact that the appellant secured an Italian Identity card, after his American passport was taken away and the fact that the Italian law provided that Italian citizenship *might* be reacquired by two years residence in Italy. (Jt. App. pp. 33, 57, 63, 68.) Such evidence is clearly insufficient to support a finding of expatriation. It should first be noted that an Italian Identity card was not restricted to Italians but was issued as well to foreigners in Italy. (Jt. App. p. 69.) Secondly, appellant utilized such card because it was necessary for travel within Italy.

In *Gillars v. United States*, 182 F. (2d) 962, this Court said: “A passport is some, though not conclusive, evidence of citizenship”. In the instant case, the appellant had an identity card. Assuming, without conceding, that it, like a passport, was some evidence of citizenship, it would merely establish that the appellant was considered an

Italian national. Such proof, might indicate that the Italian government did not recognize appellant's American nationality rather than that appellant had become a naturalized Italian. No proof was introduced to establish that appellant had ever lost his Italian nationality acquired at birth. Appellant secured the identity card solely because it was necessary for travel in Italy after he no longer had a passport (Jt. App. p. 43). Use of a foreign passport was suggested as a ground of expatriation in 1940 and specifically rejected (Hearings, H.R. 6127, Superseded by H.R. 9980, 76th Congress, p. 491). Here, appellant had a foreign identity card rather than a foreign passport—a card used by Italians and foreigners only within the confines of Italy rather than in international travel. The exact contents of the card are not shown by the record. Upon such vague evidence, it cannot be concluded that appellant secured foreign naturalization.

Appellee contends that appellant was naturalized in July 1938 under the Italian Nationality Law of 1912. Article 9 of this law provides:

“Art. 9. He who has lost nationality in pursuance of Art. 7, and 8, may reacquire it . . .

(3) After two years residence in the kingdom, if the loss of citizenship had been due to the acquisition of foreign citizenship.”

(A) As the law reads, it states that one may reacquire Italian citizenship by two years residence in Italy. It is submitted that the statute as it is worded is permissive. Appellant never applied for naturalization in Italy nor was any application ever made on his behalf. There is no record in Italy of appellant's alleged naturalization.

(B) Under the Nationality Act of 1940, 8 U.S.C. 801(a) foreign naturalization to result in expatriation must be upon the application of the American citizen or his parent.

These provisions were considered a codification of the Expatriation Act of March 2, 1907 (34 Stat. 1228; 8 U.S.C. 16). "Thus subsection (a) (8 U.S.C. 801-a) including the words 'through the naturalization of a parent having legal custody of such person merely serves to state in clearer language the rule now contained in the first paragraph of Section 2 of the Act of March 2, 1907.'" *House Immigration Hearings*, H.R. 6127 Superseded by H.R. 9980, 76th Congress, pp. 489, 407.

Expatriation laws are penal and should be strictly construed to preserve American citizenship. *In re Wildberger*, 214 Fed. 508, 509. Where foreign citizenship is conferred without an application for naturalization, it should not be considered such naturalization as will result in loss of citizenship.

If the Italian naturalization statute, was not permissive, but conferred naturalization, regardless of the intent of the individuals involved, and *ipso facto*, by mere residence in Italy, then it did so involuntarily and expatriation can not be founded upon such involuntary naturalization.

Doreau v. Marshall, 170 F. (2d) 721;

Schioler v. Secretary of State 175 F. (2d) 402.

Thus in 1840 and 1857 when Peru and Mexico provided that where foreigners acquire real estate they are *ipso facto* naturalized, we asserted the view that such law was not binding upon us. We stated that "a law by a foreign state providing that all persons visiting such state are to be regarded as citizens or subjects will not be regarded as internationally binding."

III *Moore International Law Digest* 302-304.

It is submitted, that there was no proof that the Italian Nationality Law conferred naturalization, without an application by the appellant. The evidence forms no basis for concluding that the appellant was in fact naturalized in

Italy and that he was expatriated by reason of foreign naturalization.

II

THE FINDING THAT THE APPELLANT WAS EXPATRIATED BY FOREIGN RESIDENCE WAS ERRONEOUS

Appellant submits that the opinion of this court in *Petro v. McGrath*, No. 10616, C.A.D.C., November 16, 1950, correctly summarizes our expatriation laws. There it was said:

“As regards the long continued residence abroad, namely in Canada, that cannot be considered a ground for voluntary expatriation since no statute so provided until the Nationality Code of 1940, *supra*, was passed.”

Nevertheless, the District Court held in the instant case that the appellant had expatriated himself by residence abroad in view of the second paragraph of Section 2 of the Expatriation Act of 1907 (34 Stat. 1228; 8 U.S.C. 17).

(A) Assuming that the presumption created by foreign residence under the 1907 Expatriation Act relates to loss of citizenship rather than loss of diplomatic protection, appellant did not lose his citizenship.

The effect of the 1907 Act presumption will be discussed below. Assuming that it relates to loss of citizenship rather than protection abroad, appellant overcame the presumption and it is therefore without effect upon him.

1. The presumption by its own terms does not expatriate during wartime. Its effective date was postponed until October 14, 1946 (*supra*, p. 4) and we are still at war. *Ludecke v. Watkins*, 335 U.S. 160. Hence it cannot yet expatriate.

2. Appellant satisfied the American consul at Naples that he was not subject to the presumption for the consul never

ruled that he was expatriated thereunder; nor did the appellee raise this issue until the date of trial herein. It is not raised by the pleadings nor the pretrial memorandum. (Jt. App. pp. 28, 30.)

3. Appellant overcame the presumption because as he testified, he went abroad on account of ill health—rheumatism of his knees. (Jt. App. pp. 40, 57.) (See Rule (b) *supra*, p. 5.) That appellant could secure good treatment in the United States as found by the District Court is immaterial. (Jt. App. p. 32.)

4. Appellant overcame the presumption because he did indicate his desire to return to the United States for permanent residence prior to October 14, 1946. He sought to return in 1938. In 1939 war broke out in Europe. From 1941 to 1944 there was no consular service or available transportation to the United States from Italy. In 1945 as the letter from the State Department to Miss Fiorello (Exhibit 3, Jt. App. p. 65) reveals, transportation was still unavailable—although appellant was then ready and desirous of returning to the United States. Appellant's expressed desire to return to the United States for permanent residence is sufficient to overcome the presumption. In 39 *Op. Atty. Gen.* 411 Attorney General Jackson declared:

“Moreover the presumption of expatriation arising under the statute may be overcome upon the presentation to State Department officials of satisfactory evidence showing that the naturalized citizen has made definite arrangements to return immediately to the United States to reside permanently. Thus, assuming that Mrs. A. intends to come to the United States to reside permanently, the statute appears to be inapplicable.”

The presumption of loss of citizenship is “easy to preclude and easy to overcome. It is a matter of option and intention.” *United States v. Gay*, 264 U.S. 353, 358. It

is overcome simply by showing that the naturalized person intended to retain his American citizenship and to eventually return to the United States for permanent residence. *U. S. ex rel. Anderson v. Howe*, 231 Fed. 546, *Nurge v. Miller*, 286 Fed. 982, *Miller v. Sinjen*, 289 Fed. 388—a showing which need not be made abroad or solely to the State Department. It may be made to the immigration authorities. See *Miller v. Sinjen, supra*, *United States v. Eliassen*, 11 F. (2d) 785.

It is submitted that because we are still at war, because appellant went abroad for his health, because he indicated his desire to return for permanent residence prior to 1946, because he was prevented from returning during the war (Rule c, *supra*, p. 5), and in view of the fact that he actually returned for permanent residence, the presumption cannot be used to expatriate him.

(B) The 1907 Act Presumption Relates to Loss of Protection and not to Expatriation

If the presumption of the 1907 Act is applicable herein, nevertheless it did not cause appellant's expatriation. The view adopted below is contrary to the well established view of the Department of Justice that the presumption relates merely to loss of protection abroad. 28 *Op. A. G.* 504; 35 *Op. A. G.* 351, 357; 35 *Op. A. G.* 399; 39 *Op. A. G.* 411. Since 1926, it has been the established practice of the State Department to hold that the presumption of the 1907 Act is concerned solely with loss of diplomatic protection abroad. III *Hackworth, Digest of International Law*, pp. 294, 295. And the administrative position with regard to this presumption has been expressly approved by the courts and by Congress.

Carmardo v. Tillinghast, 29 F. (2d) 527 was an exclusion case in the First Circuit. The Relator claimed American

citizenship. The Court, after first saying (p. 530), "It is highly doubtful whether the provisions of law contained in the second paragraph of this section (section 2, Act of March 2, 1907) have any other or further application than to fix the length of time beyond which this government will not extend protection to its naturalized citizens residing abroad, as the preamble of the act declares", reviewed the prior holdings on this question, some of which we have set forth above, and concluded (p. 531):

"In view of the language of the preamble of the act, the conflict that would exist between the act and the provisions of some of our treaties with foreign nations, and in view of the opinions expressed by Attorney General Wickersham and the Circuit Court of Appeals of the Eighth Circuit, we think the provisions of Section 2 are not applicable to this case."

When Congress enacted 8 U.S.C. 804 (Section 404 of the Nationality Act) it recognized that the presumption in the second paragraph of the Act of March 2, 1907 had been construed judicially to relate only to loss of protection abroad. The report which was prepared by the State, Justice and Labor Departments and approved by Congress stated: (*Hearings on H.R. 6127, H. R. 9980*, House Immigration Committee, 76th Congress, 1st Session, p. 494)

"The second paragraph of section 2 of the Act of March 2, 1907, was adopted as a result of recommendations contained in a report of December 15, 1906, by Messrs. James B. Scott, David J. Hill, and Gaillard Hunt, who had been designated by the Secretary of State as a 'Board to inquire into the laws and practice regarding citizenship, expatriation, and protection abroad,' which report was transmitted to the Speaker of the House of Representatives by Secretary of State Root in a letter of December 18, 1906 (House Doc. No. 326, 59th Cong. 2 sess.), and while it has been of much practical use in enabling the Department of State

and diplomatic and consular officers of the United States abroad to determine in what cases the protection of this Government should be extended or denied to naturalized citizens residing abroad, it has been found to a considerable extent to be insufficient and unsatisfactory, since, as construed by the courts, *the presumption of loss of citizenship arising under its terms never becomes final, regardless of the length and cause of the foreign residence.* (*Nurge v. Miller*, 286 Fed. 982; *Miller v. Sinjen*, 289 Fed. 388; *United States v. Eliassen*, 11 F. (2d) 785; *Camardo v. Tillinghast*, 29 F. (2d) 527). In these cases the Courts adopted the view which had been expressed by Attorney General Wickersham in an opinion of December 1, 1910 (28 Op. Atty. Gen. 504), that the presumption *relates to loss of the right to diplomatic protection as a citizen, rather than loss of citizenship itself. The result is that the persons concerned are free at any time to return to the United States as citizens thereof, and to bring with them, as citizens, children born abroad during the foreign residence.*" (Italics supplied.)

See also; 3 *Hackworth, Digest of International Law*, pp. 295, 294.

When the presumption in the 1907 Act was extended in Section 409 of the Nationality Act (8 U.S.C. 809) this same report stated (Hearings on H.R. 6127, H.R. 9980, *supra*, p. 505) :

"The meaning of the proviso to this section seems fairly clear. It will be observed that, under the proviso, the presumption of loss of citizenship which may have arisen against a naturalized citizen prior to the effective date of the proposed act, because of residence of 2 years in the foreign state from which he came or 5 years in any other foreign state is to be continued during the period of 1 year following the effective date of the act referred to in the principal part of this section, until the expiration of which sections 402 and 405 shall not take effect. *There is obviously no reason*

why the presumption of loss of nationality, which, as explained above, has been construed by the courts to mean loss of the right to diplomatic protection, should not continue during the interim of 1 year referred to if it is not meanwhile rebutted." (Italics supplied.)

Thus it is clear that Congress intended to treat the presumption as was construed by the courts and the administrative agencies, to relate to loss of protection abroad rather than to expatriation. It specifically indicated that this was its construction in extending the presumption under 8 U.S.C. 809. Hence even if the presumption applied to appellant, it did not expatriate him.

(C) *Appellant was not expatriated after 1940 under 8 U.S.C. 804*

No finding was made that the appellant expatriated himself under the 1940 Nationality Act, under which he was required to return to the United States prior to October 14, 1946. (8 U.S.C. 804). Nevertheless, it should be observed that appellant was unable to return after 1940, because of factors beyond his control.

8 U.S.C. 804(a) provides for the loss of citizenship by residence abroad for two years provided a citizen acquires foreign nationality through operation of law by reason of the two years residence. This section did not result in expatriation until October 14, 1946. 59 Stat. 544.

1. Appellant contends as indicated *supra*, that he was not naturalized in Italy and that this section is inapplicable.

2. Appellant also contends that this section was inapplicable because he was unable to leave Italy during and subsequent to World War II. During the War he was unable to leave Italy because of lack of transportation and inability to secure travel documents. There were no consular officials in Italy during the War and until about 1945.

When the consular offices opened, appellant on October 24, 1945 applied for registration as an American citizen and passport facilities. (Jt. App. p. 66.) His claim of American citizenship was denied. Without an American passport to which he was entitled if his claim be supported, and without an Italian passport and an immigration visa to which he was not entitled, plaintiff could not even book passage to America. No steamship company would take him with the possibility of being fined under our immigration laws for bringing a person without proper documents. 8 U.S.C. 216(a). In addition, it was not possible to leave Italy without documentation. The record will bear evidence that plaintiff did what he could to return within the period prescribed by 8 U.S.C. 804. In this connection, the Government stated at page 26 in its Supreme Court brief in *Lapides v. Clark*, 176 F. (2d) 619 as follows:

"It is the administrative view that a naturalized citizen who attempted in good faith to return to the United States within the stipulated period but whose timely return was delayed by conditions beyond his control did not lose his American citizenship under Section 404." (8 U.S.C. 804)

Appellant falls into this category and accordingly did not expatriate himself under 8 U.S.C. 804.

III

APPELLANT DID NOT EXPATRIATE HIMSELF BY VOTING IN ITALIAN ELECTIONS

Before considering the specific testimony of appellant with regard to his participation in the Italian elections of March 24, 1946 and June 2, 1946, attention is called to the fact that his conduct cannot be properly evaluated without taking notice of the confusion, misinformation, and pres-

sures which surrounded all people physically present in Italy during this period. Appellant sought to introduce Exhibit 7 (Jt. App. pp. 50-53) to explain this Italian background. It will be observed that in *Arikawa v. Acheson*, 83 F. Supp. 473, *Kuniyuki v. Acheson*, 94 F. Supp. 358; *Kuwahara v. Acheson*, 19 Law Week 2417 and *Brehm v. Acheson*, 90 Fed. Supp. 662, the courts took cognizance of the situations which existed in Japan and Germany before determining whether voting in those countries resulted in expatriation.

Exhibit 7 is a House Report No. 1469 of the 81st Congress, entitled, "Loss of United States Citizenship by Voting in Italian Elections." It was prepared by a Special Subcommittee of the House Immigration Committee pursuant to a resolution which authorized it to undertake a study of the immigration and nationality laws. The District Court refused to receive the findings of this report in evidence as to conditions which existed in Italy on the ground that it was not proper to "go behind the language of the statute". (Jt. App. pp. 51-52.) Subsequently the court permitted the receipt of the report for the limited purpose of establishing the provisions of the Italian election law of March 12, 1946. (Jt. App. pp. 52-53.) It is submitted that the court erred in refusing to consider all relevant findings of the report which pertained to the elections in which appellant participated.

To be compared with the attitude of the court below, is the view of another judge of the same court. In *Domenico v. Rotundo* (D.C., Civil Action No. 2160-49), Justice McGuire said on April 4, 1951, in holding that voting in Italy did not result in expatriation:

"The court takes judicial notice of the fact that the situation in Italy in 1946 was such that it would be very wise to vote if you wanted to eat. I was there, by

the way, last summer and the food situation was better. But, I think, on my part, if I did not issue a declaration in favor of this man, I would be doing him a gross injustice.

Accord: Judge Bastian, in *Brancaleone v. Acheson*, Civil No. 4443-48

In *Stasiukevich v. Nicolls*, 168 F. (2d) 474 a report of the House Un-American Affairs Committee was read into evidence in a naturalization case to establish plaintiff's membership in the International Worker's Order. The First Circuit said:

"The official report of a legislative or Congressional Committee is admissible in evidence in a judicial proceeding as an exception to the hearsay rule, where the report, within the scope of the subject matter delegated to the Committee for investigation, contains findings of fact on a matter which is at issue in the judicial proceeding. Wigmore on Evidence 1662, 1670. Indeed the court could probably take judicial notice of the report without its formal introduction into evidence."

See also: *United States v. Aluminum Co.* 148 F. (2d) 416, 445-446.

59 *Harvard Law Review* 481, 485-6,

2 *Barron and Holtzoff, Federal Practice and Procedure*, p. 683.

If the full findings of the report had been received in evidence and considered, it would prove that there were only two political elections conducted in Italy after World War II, an election on June 2, 1946 and another in 1948, that an intense campaign preceded these elections which sought to (Exhibit 7, p. 5; Jt. App. pp. 70-74):

"hammer into the head of the voter the notion that any absenteeist would be considered a shameful example of lack of civic-mindedness, and that he will be punished."

On March 12, 1946 a law was passed providing that abstentionists were to have their names posted at the City Hall and a notation that they did not vote was to be recorded on their certificates of good behavior. The Committee Report states further as follows (Jt. App. pp. 72-74):

"One has to bear in mind the fact that the posting of the names of abstentionists in the city halls of their communities caused at least severe embarrassment for persons so exposed, inasmuch as it made them likely to be suspected as pro-Fascists, inimical to the new democratic processes reintroduced in Italy after almost 25 years of a dictatorial regime. It also led many Italians to believe that the often-heard threat of having their food ration coupons withdrawn would be enforced once the fact of their abstention was publicly known.

Equally embarrassing was the threatened entry to be made on certificates of good conduct described above. Such certificates are required in Italy in many administrative operations, such as issuance of driving or hunting licenses, and above all, such documents are generally required by potential employers, public or private, from applicants for a position. It was generally understood that the entry pointing out the failure of the individual to cast a ballot would represent a derogatory qualification and that it would be a great disadvantage to the person concerned.

The subcommittee is of the opinion that while in large cities these moral and limited legal sanctions might have had a small effect, they nevertheless caused much more serious consequences in smaller communities where the individual so singled out had every reason to believe that he would become the subject of public contempt and that his economic and social interests would be put in jeopardy.

• • •

Dual citizenship exists in Italy. There is no provision in the Italian law that Italian citizens who have lost their nationality by becoming naturalized in a foreign

country, and their children automatically lose their Italian citizenship. * * * Consequently, the great majority of American citizens of Italian origin, residing in Italy during the 1946 and 1948 election period, received at their residence or at the home of their parents a summons to vote * * *.

American consular officers abroad, particularly in Italy have frequently pointed out that the persons concerned had no knowledge whatsoever that by participating in foreign political elections or plebiscites they would be losing their citizenship in the United States. American diplomatic and consular officers state unanimously that the most frequent statement made by petitioners for American passports in Italy is to the effect that they voted not only in ignorance of the effect upon their citizenship status, but also—

upon the advice of high American officials, writers, radio broadcasters, relatives, and friends in the United States who were interested in preventing Communists from taking control of the government in Italy.”

See also: *Congressional Record*, February 2, 1950, pp. 1417 et seq.

(A) *Appellant's Participation in the Election of June 2, 1946*

Appellant lived in a small community outside Naples. (Jt. App. p. 42.) He testified that there was considerable propaganda preceding this election, that he was told that his failure to vote would result in jail, starvation, loss of his civil rights and would prevent him from returning to the United States. He was also told to vote for the liberal party, which was the American party. The first night of the voting appellant abstained but could not sleep and the following day he voted. (Jt. App. pp. 49-50.) In appellee's Exhibit 1 (Jt. App. p. 77), appellant likewise stated: "I remember that the propaganda insisted in the obligatory

of voting for the Political elections of June 2, 1946, but not for the Administrative elections occurred on March 24, 1946”.

It is submitted that this evidence, viewed in its proper prospective with judicial notice of the full background of the Italian elections should result in a finding that appellant did not expatriate himself by voting on June 2, 1946. Judge Bastian, so held on March 2, 1951 in *Brancaleone v. Acheson*, Civil Action No. 4443-48.

In holding that voting in Japan did not result in expatriation, the court in *Arikawa v. Acheson*, 83 F. Supp. 473 said:

“The plaintiffs, American citizens, were there in an atmosphere where a General of the United States and Commander-in-Chief was appealing to all women to vote * * * Manifestly under such admitted circumstances, it would be unjust to say they were acting of a free mind and of their own intelligent choice. The fundamental principle of law is applicable as to influence, mistake and confusion existing which dominated the mind in not acting freely and voluntarily at the time. *Inouye v. Clark*, D.C. 73 F. Supp. 1000; *Doreau v. Marshall*, Secretary of State, 3 Cir., 170 F. 2d 721; *Schioler v. United States*, 75 F. Supp. 353.”

In *Kuniyuki v. Acheson*, 94 F. Supp. 358, the court expressly recognized that threats of the deprivation of food or a job would constitute duress. It said:

“I don’t think that I would be justified, from the evidence in this case, in holding that there was any duress, that there was any physical threat of bodily harm; or physical threat of the deprivation of her liberty, her home, her job, her food or her clothing or any other of the many various means which modern civilization (and I guess ancient as well) has of hurting people physically in order to coerce them to do things.”

The recent case of *Kuwahara v. Acheson* (S.D. Calif., Byrne J, March 2, 1951; 17 Law Week 2417) however, found

duress and no expatriation in voting in Japan where there was intense propaganda, threat of loss of ration coupons and an Australian soldier directed the plaintiff to vote. The court specifically stated that the action of the plaintiff in voting could only be properly evaluated in the light of the general conditions which existed in Japan at the time.

It is submitted, that a similar situation exists here. Viewed in the light of the conditions which existed in Italy at the time, a factor which the court below erroneously refused to consider, the appellant did not expatriate himself by voting in the elections of June 2, 1946.

In *Moser v. United States*, 19 Law Week 4193, 4195 (April 9, 1951) the Supreme Court said:

“Petitioner did not knowingly and intentionally waive his rights to citizenship. In fact, because of the misleading circumstances of this case, he never had an opportunity to make an intelligent election between the diametrically opposed courses required as a matter of strict law. Considering all the circumstances of the case, we think that to bar petitioner, nothing less than an intelligent waiver is required by elementary fairness. *Johnson v. United States*, 318 U.S. 189, 197. To hold otherwise would be to entrap petitioner.”

The *Moser* case involved a petitioner for citizenship, an applicant for a privilege. In the instant case, we are concerned with the loss of the vested and precious right of citizenship. Before citizenship is taken away, an intelligent choice should be required. The confusion and the intense propaganda campaign as well as the threats of legal sanctions which surrounded the Italian elections—factors which the court below refused to consider—prevented an intelligent and knowing waiver of citizenship by the appellant. Elementary fairness requires that under the circumstances prevailing in Italy that expatriation should not obtain.

(B) *Appellant's Participation in the Election of March 24, 1946*

Appellants testimony clearly indicates that no undue influence motivated his participation in the election of March 24, 1946. This was a local administrative election for mayor. (Jt. App. pp. 48-49.) Significantly, the House Immigration Committee did not regard this as a political election, for its report refers only to two political elections after World War II, the elections of June 2, 1946 and April 18, 1948. (Jt. App. p. 70.) Thus we have a congressional indication that this was not the type of election which should result in expatriation. In any event, it is submitted that participation in a local municipal election was not intended to be an act of expatriation. Rather was it intended, to take away the precious right of American citizenship only where an individual participated in a national election and thereby indicated that his allegiance was to that foreign nation.

Participation of American nationals in the Saar Plebiscite of 1935 first focused Congressional attention upon foreign voting by our citizens. A bill to deprive them of citizenship was introduced in the 74th Congress (H.R. 5839). Under the Nationality Act of 1940 (8 U.S.C. 801-e) expatriation results from:

“voting in a political election in a foreign state, or participating in an election or plebiscite to determine sovereignty over foreign territory.” (Italics supplied).

The basis of this ground of expatriation is that by voting in the foreign state election a citizen indicates attachment to the foreign state. *Hearings on H. R. 6127*, 76th Congress, p. 490-1.

The hearings which preceded the Nationality Act indicate

that considerable doubt existed as to what was intended by a "political election". Henry F. Butler testified:

"Let us say, for instance, they have voted in a political election. I do not know what that means. And, I defy anyone to tell just what the person could or could not do, as a result of which they would lose their citizenship. It is very difficult to say what would be a political election, or for a person to know just what the political election means" (Hearings on H.R. 6127, *supra*, p. 286).

The report of the President's Committee, which recommended the Nationality Act, however, makes it clear that only national elections were contemplated. It states:

"Taking an active part in the political elections of a foreign state by voting in a political election therein is believed to involve a political attachment and practical allegiance thereto which is inconsistent with continued allegiance to the United States whether or not the person in question has or acquires the nationality of a foreign state" (Hearings on H.R. 6127, *supra*, pp. 490-1).

Voting in a local municipal election is not voting in an election of a foreign state, nor does it indicate political attachment to the foreign state. Certainly, participation in a local school trustee election in a foreign state would not result in expatriation and it has been so held administratively. *Matter of C.*, Board of Immigration Appeals File No. 56175/489.

The word, "political" may conceivably have several different meanings. It has been defined as "relating to or concerned in public policy and the management of the affairs of the state or nation." *Bouvier, Law Dictionary; Encyclopedic Law Dictionary; Black's Law Dictionary; Oxford Universal English Dictionary; Funk and Wagnalls New Standard Dictionary; Webster's New International*

Dictionary; Century Dictionary and Cyclopedia. And, although, there may be other definitions of "political," we submit that this definition, which will exclude local elections should be adopted. This follows, because expatriation statutes are narrowly construed. *In re Wildberger, supra.* This view is reinforced by *Savorgnan v. United States*, 338 U.S. 491, where the expression "naturalization in a foreign state" as used in 8 U.S.C. 801-a was interpreted to mean "naturalization into the citizenship of any foreign State." Here in the same section 801 of Title 8 voting in a political election in a foreign state should be interpreted to mean voting in a political election of a foreign state, i.e. a national election. This interpretation would include voting outside the physical bounds of the foreign state by absentee ballot—an act which should expatriate if it is in a national election. It is therefore submitted that by voting in the March 1946 municipal election, appellant did not expatriate himself.

CONCLUSION

Appellant did not expatriate himself by foreign naturalization, foreign residence, nor by voting in foreign elections. The District Court improperly refused to consider relevant evidence bearing upon appellant's conduct in voting in foreign elections and erred in dismissing the complaint herein. Accordingly, the judgment below should be reversed.

Respectfully submitted,

JACK WASSERMAN,
Attorney for Appellant,
Warner Building,
Washington, D. C.

GASPARE CUSUMANO,
GUSTAV LAZARUS,
Of Counsel.

JOINT APPENDIX

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COMPLAINT

Filed December 30, 1948

The plaintiff, by his attorneys, respectfully alleges:

1. That this is an action for a declaratory judgment of citizenship under Section 503 of the Nationality Act of 1940 as amended (54 Stat. 1171, 8 U.S.C.A. 903).

2. That the defendant is Secretary of State and as such is charged with the duty of issuing and revoking passports of American citizens and charged with general supervision of the foreign consular service of the United States.

3. That the plaintiff was born in Italy.

4. That during World War I, plaintiff served in the armed forces of the United States and was honorably discharged from the United States Army on December 29, 1918 at Fort Dix, New Jersey with Army Serial No. 3183097.

5. That in the Supreme Court of New York in New York County on May 21, 1920, the plaintiff was naturalized as a citizen of the United States.

6. That thereafter the plaintiff returned to Italy and resided there from June, 1929 to March, 1930, from July, 1932 to May 29, 1935 and since July, 1936.

7. That pursuant to Italian law, plaintiff reacquired Italian nationality by two years residence in Italy, regardless of his intention.

8. That the aforesaid reacquisition of Italian nationality was involuntarily conferred upon the plaintiff without his consent and that he did not ratify the said reacquisition.

9. That on March 24 and June 2, 1946, the plaintiff participated in Italian political elections but was compelled to do so by reason of the undue influence and pressure exerted upon him by the officials of the Italian Government. That the plaintiff did not voluntarily participate in the said elections.

24 10. That the defendant, acting through his duly authorized agents, has ruled that the plaintiff lost his American citizenship and expatriated himself under Section 2 of the Expatriation Act of March 2, 1907 (8 U.S.C.A. 16; 34 Stat. 1228) and by reason of reacquisition

of Italian nationality under the Italian Nationality Act of 1912.

11. That by reason of the foregoing, the defendant, acting through his duly authorized agents, has denied the citizenship of the plaintiff and the plaintiff has been denied the right and privileges of such citizenship.

12. That the plaintiff is a citizen of the United States.

WHEREFORE plaintiff respectfully asks for a judgment declaring that he is a citizen of the United States.

(S) JACK WASSERMAN.

GASPARE CUSUMANO,
Of Counsel.

25

ANSWER

Filed April 2, 1949

First Defense

The complaint fails to state a claim upon which relief can be granted.

Second Defense

1. The defendant admits the allegations of paragraphs 1, 2, 3, 5, 6, 10 and 11.

2. Defendant denies the allegations of paragraph 7 as pleaded and states that the applicable Italian law is contained in the provisions of Article IX (3) of the Italian Nationality Law of June 13, 1912, which provides as follows:

“Article IX. He who has lost citizenship in pursuance of Articles VII and VIII may reacquire it.

(3) After two years of residence in the kingdom, if the loss of citizenship had been due to the acquisition of foreign citizenship.”

3. The defendant states that he is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 4, but denies the materiality thereof.

4. The defendant denies the allegations of paragraphs 8 and 12.

5. The defendant admits so much of the allegations of paragraph 9 as states that on March 24 and June 2, 1946 the plaintiff participated in Italian political elections but denies all other allegations in the said paragraph contained.

26

Third Defense

Plaintiff has expatriated himself under the provisions of Section 2 of the Act of March 2, 1907 (Title 8, United States Code (1934 Ed.), Sec. 17). Defendant alleges that plaintiff reacquired Italian nationality under provisions of the Italian law pleaded in paragraph 2 of defendant's Second Defense and manifested an acceptance thereof by applying for and obtaining Italian identification cards, by residing in Italy since 1936 and by voting in Italy.

Fourth Defense

Plaintiff has expatriated himself under the provisions of Section 401(e) of the Nationality Act of 1940 (Title 8, United States Code, Sec. 801(e), 54 Stat. 1168) by voting in political elections in Italy.

WHEREFORE, defendant prays that the complaint be dismissed, that he be granted his costs herein and for such other relief as may be appropriate.

/s/ GEORGE MORRIS FAY,
United States Attorney.

/s/ ROSS O'DONOGHUE,
Assistant United States Attorney.

/s/ SAMUEL K. ABRAMS,
Assistant United States Attorney.

27

PRETRIAL PROCEEDINGS

Filed August 18, 1950

Statement of Nature of Case:

See attached pre-trial memorandum, initialed by counsel and signed by court.

This is an action for declaratory judgment under Section 503 of the Nationality Act of 1940 (8 U.S.C. 903) by which plaintiff seeks to compel the Secretary of State to issue him a passport and also a judgment of this Court declaring that he is a citizen of the United States. Plaintiff was born in Italy and was naturalized in the United States on May 21, 1920. Subsequently, on various occasions, he returned to Italy and he has resided there since July, 1936, until he returned to the United States of America on October 15, 1949 to prosecute this action. On March 24th and June 2, 1946, plaintiff participated in Italian political elections. Plaintiff claims this participation was under duress and that it, therefore, does not constitute an act of expatriation. In addition, plaintiff contends that the election of March 24, 1946, was a local election and that it did not result in expatriation.

Defendant contends that plaintiff has expatriated himself for three reasons:

1. By virtue of Italian Law, plaintiff, being a naturalized citizen of a foreign state (United States) reacquired Italian nationality on or about July, 1938, upon two years continued residence in Italy after having been naturalized in this country. Defendant relies upon Section 17 of Title 8, United States Code (1934 Edition).

2. Defendant claims that plaintiff expatriated himself by voting or participating in a political election in a foreign State in violation of Section 801(e) of Title 8, U.S.C.

29 3. Defendant claims further that plaintiff expatriated himself on October 14, 1946, by two years' residence in Italy under 8 U.S.C. 804(a).

Plaintiff contends that Italian nationality was involuntarily conferred upon him by two years' residence in Italy subsequent to July 1936; that he never applied for Italian naturalization; and, therefore, that he was not naturalized in Italy in accordance with the provisions of the 1907 Expatriation Act (8 U.S.C. 17, 1934 Edition). He further contends that his failure to return subsequent to the effective date (8 U.S.C. 804(a)) was due to the failure of defend-

ant to issue him a passport, and recognize his American citizenship.

STIPULATIONS

1. It is stipulated that the provisions and interpretation of Italian Nationality Law of 1912, and House Reports 1469 and 1506, 81st Congress, 2nd Session, and State Department letter dated December 29, 1947, addressed to David M. Potts, and certain State Department records, all of which have been initialed by counsel, will be admitted in evidence without formal proof, subject to objection as to materiality and relevancy.

2. It is stipulated that the Italian election of March 24, 1946, was a political, but not a national election.

3. Counsel for defendant will attempt to verify contention of plaintiff's counsel that subsequent to 1945 persons were unable to leave Italy legally without passports.

4. Counsel for defendant is hereby given ten days within which to file an amendment to the answer setting forth therein the defense outlined in paragraph 3 above.

JENNINGS BAILEY,
Judge.

30

AMENDMENT TO ANSWER

Filed August 24, 1950

Fifth Defense

Plaintiff expatriated himself on October 14, 1946 by two years' residence in Italy, pursuant to the provisions of 8 United States Code, 804(a).

GEORGE MORRIS FAY,
United States Attorney.

ROSS O'DONOGHUE,
Assistant United States Attorney.

STAFFORD R. GRADY,
Assistant United States Attorney.

31

MEMORANDUM

Filed December 22, 1950

The plaintiff, who had been naturalized as an American citizen in the year 1920, returned to Italy, his birthplace in

1936, where he remained until 1949, and then came back to the United States. The laws of Italy provide:

"He who has lost nationality in pursuance of Art. 7, and 8, may reacquire it. . . .

"(3) After two years residence in the kingdom, if the loss of citizenship had been due to the acquisition of foreign citizenship."

Under the Act of Congress of 1907 (8 U.S.C. 17, Sec. 2) it was provided:

"When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said year * * ."

In my opinion the plaintiff has not overcome this presumption.

In addition the plaintiff voted in two political elections in Italy in 1946 and thereby lost his United States nationality (8 U.S.C. 80(e)). I cannot agree with the contention of the plaintiff that he voted under duress.

I think that the reason that plaintiff gives for his remaining in Italy, that he was seeking the warm baths of that country to relieve his rheumatism, is a mere subterfuge. There is no doubt that he could secure as good treatment in this country as in Italy.

32 I find, therefore, that the plaintiff is no longer a citizen of the United States and the suit will be dismissed with costs.

(s) JENNINGS BAILEY,
Judge.

33 FINDINGS OF FACT AND CONCLUSIONS OF LAW
Filed January 12, 1951

The above cause having come on for trial before the Court, sitting without a jury, the Court having considered the pleadings and the evidence, and having heard argument of counsel, and having filed a memorandum opinion herein on December 22, 1950, the Court hereby enters the following:

Findings of Fact

1. Plaintiff was born in Italy in 1894 and thereby acquired Italian nationality at birth.

2. Plaintiff was naturalized a citizen of the United States on May 21, 1920.

3. In July, 1936, plaintiff returned to Italy, where he has continued to reside until 1949.

4. The Italian Nationality Law provides:

“He who has lost nationality in pursuance of Art. 7, and 8, may reacquire it . . .

(3) after two years' residence in the kingdom if the loss of citizenship had been due to the acquisition of foreign citizenship.” (Article IX (3) of the Italian Nationality Law of June 13, 1912).

5. On March 24th, and again on June 2nd, 1946, plaintiff voluntarily voted in political elections in Italy.

Conclusions of Law

1. Plaintiff expatriated himself by being naturalized in Italy in conformity with its laws (Article IX(3) of the Italian Nationality Law of June 13, 1912). Title 8, United States Code 17, March 2, 1907, c. 2534, 34 Stat. 1229.

34 2. Plaintiff, a naturalized citizen of the United States, in the event he did not expatriate himself as indicated in Conclusion of Law No. 1, has failed to overcome the presumption of expatriation created by his continued residence in Italy after 1936. 8 U.S.C. 17, Mar. 2, 1907, c. 2534, 34 Stat. 1229.

3. In the event plaintiff did not expatriate himself as indicated in Conclusion of Law 1 or 2, he did later expatriate himself by voting in political elections in Italy in 1946. 8 U.S.C. 801(e).

4. Plaintiff is no longer a citizen of the United States.

5. The complaint will be dismissed.

JENNINGS BAILEY,

Judge.

Dated: January 8th, 1951.

35 OBJECTIONS TO PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Filed January 12, 1951

The plaintiff objects to proposed Conclusion of Law No. 1 submitted by the defendant on the ground that the Court did not find that the plaintiff was expatriated by naturalization in Italy nor does the evidence warrant such a conclusion.

JACK WASSEMAN,
Attorney for Plaintiff.

36 SUPPLEMENTAL MEMORANDUM

Filed January 12, 1951

Upon further consideration, I am satisfied that the plaintiff reacquired his Italian citizenship under the provisions of the Italian Law set out in Paragraph No. 4 of my findings of fact and, therefore, despite the objections of the plaintiff I shall not make any change in the findings of fact and conclusions of law.

(S.) JENNINGS BAILEY,
Judge.

1-12-51.

37

ORDER

Filed January 12, 1951

The above cause having come on for trial before the Court, sitting without a jury, the Court having considered the pleadings and the evidence adduced, and having entered Findings of Fact and Conclusions of Law, it is by the Court this 8th day of January, 1951,

Ordered, Adjudged and Decreed that the complaint be, and the same hereby is dismissed with prejudice and with costs against the plaintiff.

JENNINGS BAILEY,
Judge.

38

NOTICE OF APPEAL**Filed February 8, 1951**

Notice is hereby given that Sisto Bisceglia, the plaintiff above named, hereby appeals to the Circuit Court of Appeals for the District of Columbia from the order entered herein on January 8, 1951 dismissing the complaint.

JACK WASSERMAN,
Attorney for Plaintiff.

39

STIPULATION DESIGNATING RECORD**Filed February 28, 1951**

It is hereby stipulated by and between the attorneys for the respective parties herein that the record on appeal consist of the following:

1. Complaint.
2. Answer.
3. Amendment to Answer.
4. Pre-trial Memorandum.
5. Transcript of testimony.
6. Findings of Fact and Conclusions of Law.
7. Objections to Findings of Fact and Conclusions of Law.
8. Order dismissing complaint.
9. Memorandum of Court.
10. Supplemental Memorandum of Court.
11. Notice of Appeal.
12. Stipulation designating record.

GEORGE MORRIS FAY,
U. S. Attorney;
STAFFORD GRADY,
Asst. U. S. Attorney;
JACK WASSERMAN.

40

SUPPLEMENTAL DESIGNATION OF RECORD**Filed February 28, 1951**

It is hereby stipulated and agreed by and between the attorneys for the respective parties herein that the record

in the above matter include the following exhibits which are attached hereto:

(A) Plaintiff's Exhibits:

- No. 1. Military Discharge Certificate.
- No. 2a. Translation, letter American Vice Consul Naples, February 1, 1940.
- No. 3. Letter Ruth Shipley, May 11, 1945.
- No. 4(a). Translation, Postal Telegraph note.
- No. 5. Letter, Ruth Shipley, December 29, 1947.
- No. 6. Pages 1 and 3 of letter from Italian Ambassador (Sept. 31, 1950).
- No. 7. Pages 5, 6 and 7 of House Report No. 1469.

(B) Defendant's Exhibit:

- No. 1. Affidavit of plaintiff dated January 17, 1949.

GEORGE MORRIS FAY,
United States Attorney;
STAFFORD GRADY,
Assistant U. S. Attorney;
JACK WASSERMAN.

41

ORDER

Filed March 14, 1951

It is by the Court this 14th day of March, 1951,

ORDERED, that all exhibits, both plaintiff's and defendant's, heretofore filed in this case shall be transmitted to the Court of Appeals in their original form and shall not be photostated or otherwise reproduced.

EDWARD A. TAMM,
Judge.

We consent: JW., L. CLARK EWING.

42

Washington, D. C.,
Tuesday, November 28, 1950.

The above-entitled cause came on for trial at 1:30 o'clock p.m., Tuesday, November 28, 1950,

Before: HONORABLE JENNINGS BAILEY, Judge of the United States District Court for the District of Columbia, there being

Present: JACK WASSERMAN, ESQUIRE, and GASPARE CUSUMANO, ESQUIRE, Attorneys for the Plaintiff; and
 43 HONORABLE GEORGE MORRIS FAY, United States Attorney, by STAFFORD R. GRADY, ESQUIRE, Assistant United States Attorney, Attorney for the Defendant.

Thereupon the following proceedings and transactions were had and evidence was adduced:

.

44 SISTO BISCEGLIA was, by the Clerk of the Court, duly sworn to tell the truth, the whole truth, and nothing but the truth in response to interrogatories to him then and there propounded by the Court and by counsel for the respective parties, and, having so sworn, assumed the witness stand and testified as follows upon

Examination by Counsel for the Plaintiff.

By Mr. Wasserman:

Q. Your name is Sisto Bisceglia?

Is that correct?

A. Yes.

The Court: How do you spell that name?

Mr. Wasserman: "S-i-s-t-o B-i-s-c-e-g-l-i-a"—I do not think there is any dispute about that.

The Court: Proceed.

By Mr. Wasserman:

Q. You brought this action to establish your American citizenship.

Is that correct?

A. Yes.

Q. Where were you born?

45 A. Italy.

Q. And when were you born?

A. August 2, 1894.

Q. When did you first come to the United States?

A. 1913.

Q. And after you came to the United States in 1913, how long did you remain here?

A. From 1913 to 1929.

Q. To 1929?

A. Yes, sir.

Q. And, during World War I, did you serve in the United States Army?

A. Yes, sir.

Q. Were you honorably discharged from the United States Army?

A. Yes, sir.

Q. I show you an Army Discharge Certificate and ask if this relates to you (handing a document to the witness).

A. (after examining the document last above referred to) Yes—but this is not the first copy; the first copy they took it away, the Italian Policeman took it away.

Q. Your original papers were taken away by some officials in Italy?

A. The Italy Policeman took it away on October 29, 46 1938; took it away from me and did not give back me any more that paper.

Then I got this here (referring to the document under examination by the witness).

Mr. Wasserman: May I show the certificate to opposing counsel?

The Court: Yes.

Mr. Wasserman: I show it to you, Mr. Grady.

Mr. Grady (after examining the document): There is no objection to that, your Honor.

Mr. Wasserman: I offer it in evidence.

The Court: Let me see it (examining the document referred to).

It may be received in evidence.

(Thereupon a document denominated by counsel and the witness as "Copy of United States Army Discharge Certificate" was by the Clerk of the Court marked as "Plain-

tiff's Exhibit No. 1" and was retained by the Clerk of the Court.)

By Mr. Wasserman:

Q. Now, after you served in the American Army, did you become a naturalized citizen of the United States?

A. Yes.

Q. Do you remember when?

A. On May 21, 1920.

47 Q. Do you remember where?

A. The Supreme Court in New York.

Q. And did you thereafter have occasion to return to Italy?

A. Yes.

Q. Do you remember when you first went back to Italy?

A. The first time I went back—I went on June 24, 1929.

Q. And how long did you stay?

A. I came back here on March 18, 1930.

Q. And then did you go again to Italy?

A. Yes.

Q. When?

A. On June 24, and I reach Italy July 1st.

Q. Did you say the year that you went back?

What year did you go back again to Italy in—the second time?

A. I go back in '33.

Q. And how long did you stay?

A. I stayed from July 1st to May 29, 1935.

Q. And did you go to Italy a third time?

A. A third time?

On July 13, I left here.

Q. What year?

A. 1936.

48 Q. And when did you come back?

A. I come back in '49.

Q. 1949?

A. Yes, sir.

Q. Were you married or are you married?

A. Yes.

Q. Where and when did you get married?

A. 1935.

Q. Where?

A. Italy.

Q. You said "Italy"?

A. Yes; I live in Italy.

Q. Did you ever come with your wife to the United States?

A. I was on the '35—yes: She came three months after I come here.

Q. She came here three months after you came here in what year?

A. In '35. I come here on May 29 and she come between August, the end of August and beginning September, 1935.

Q. She came here in 1935 between the end of August and the beginning of September?

A. Yes.

Q. Did you have any children born in the United States?

A. Yes, one.

49 Q. What is her name?

A. Catherine.

Q. What was the occasion of your return to Italy in 1936?

A. Well, my—I was sick in the leg and the knees, and some—

Q. (interposing) Did you have rheumatism?

A. A kind of rheumatism in the knees.

Q. And when you returned to Italy in 1936, did you go to Italy with a United States passport?

A. Yes.

Q. Do you recall how long that passport was valid?

A. I would say about a month late—it expired already, my passport.

Q. It was to be valid for one year or two years, or three years?

A. One year—they used the same passport I had in '33.

Q. It expired in June, 1937.

Is that correct?

A. Yes.

Q. And you went in July, 1936?

A. Yes.

Q. Before or around the time your passport expired in

1937, did you go to the United States Consulate to ask for a renewal, or did you go there at other periods?

50 A. I went a couple of times, three or four times; I do not remember exactly the first time I went, but they asked for all the record, and I brought my birth certificate and citizen paper, and they read it and said "We will let you know later".

Q. And what finally happened?

A. Then I got the first letter of October 18, 1938—no, that is a mistake—that is right—and they said if I have to come back here I have to sell all property I have to come with my wife and children in Italy.

Q. What happened to your passport which expired in 1937?

A. The Consulate did not give back any more the passport; they take the passport and citizen papers and held all records, and did not give them back any more.

Q. Did you again go to the American Consulate?

A. Yes.

Q. Tell us just what happened with respect to that—how many times you went to the American Consul and just what happened.

A. I do not remember: I went many times, but I write the letter, too, besides and they told me the only way to come back: You have to sell all property you have there and go back right away.

Q. In about February, 1940, did you receive a letter from the American Consul?

51 A. I do not remember exactly the date, but I received it.

Mr. Wasserman: Do you want to look at this (handing a document to Mr. Grady who examined it)?

The Witness: I have many letters from them.

Mr. Wasserman: I am showing to counsel what purports to be a letter from the American Consulate.

By Mr. Wasserman:

Q. (after the letter last referred to had been returned to him by Mr. Grady): I show you a letter in the Italian Language dated February 1, 1940, signed by William E. Cole,

Vice Consul, together with a certificate of translation, and I ask you if you ever received that letter (handing the document referred to to the witness).

A. (after examining the document last above referred to): Yes, yes.

Mr. Wasserman: I offer that letter, together with the translation, in evidence.

Mr. Grady: I have no objection, your Honor.

The Court: Let me see that (examining the document under consideration).

It may be received in evidence.

(Thereupon the communication stated by counsel to be in the Italian Language, dated February 1, 1940, signed by William E. Cole, Vice Consul, was by the Clerk of the Court marked as "Plaintiff's Exhibit No. 2" and the document stated to be a translation thereof was by the Clerk of the Court marked as "Plaintiff's Exhibit No. 2-A" and they were retained by the Clerk of the Court.)

By Mr. Wasserman:

Q. Now, before the War, did you make any other trips to the American Consul?

A. Yes; I been there, but I cannot tell you exactly the date.

Q. Well, do you remember the years?

A. Well, beginning the War, I went two times before the War and many times after the War, because during the War there was no Consulate.

Q. Where were you living in Italy?

A. Piedimonte D'Aliaien Beneventio—before the War that was different; it is the same town.

Q. Where was the American Consul?

A. Naples.

Q. And how far is Naples from Piedimonte D'Aliaien Beneventio?

A. Eighty-five kilometers; about fifty to sixty miles—eighty-five kilometers.

Q. Do you remember the year the American Consul took your passport away? Was it right at the time it expired?

A. It was in 1937 they took it away.

Q. In 1937?

A. Yes, in the end of '37.

Q. How were you able to travel without an American passport from Piedimonte to Naples?

A. After I have no more passport I had to have some kind of identity card.

Q. An identity card?

A. There was some kind of card, because after they got the passport they ask who you are, and something like that.

Q. Where did you get this identity card?

A. I got it from the municipality, the City Hall.

Q. In Piedimonte—is that right?

A. That is right. I was around there about a year, something like that; I do not remember—I know I never need that—I did not travel.

Q. Do you know when the Consulate was reestablished in Naples after the War—in what year?

A. No, I do not remember in what year.

Q. Do you remember around when?

Do you know whether it was before 1944 or after 1944?

A. Around 1944, I think it was; around 1944.

Q. After 1944 did you again go to see the American Consul?

54 A. I was there and he always say: You have to do what the letter say; you have got a letter from October 18, 1938, what you can do, what the letter say, already.

But, the only thing it was, I had property there and they want me to sell the property and the money I cannot bring over here at that time.

Q. Now, in or around 1945, were you in correspondence with your relatives in the United States?

A. I cannot understand.

Q. Did you write letters to your relatives in the United States?

A. Yes, yes; I write all the time.

Q. Which relatives did you write to?

A. I write to my nephew, Leonard Pinton and Maji Fiorello.

Q. Who is she?

A. That is my niece.

Q. Did you ask her to do anything for you?

A. Yes: To help me out to come here.

Q. And did you have occasion to ask her to do anything else for you?

A. Well: Do the best you can, because I want to return to the United States.

Mr. Wasserman: Do you have any objection to that (handing a document to Mr. Grady)?

55 Mr. Grady (after examining the document last above referred to): No.

Mr. Wasserman: I would like to offer in evidence a letter dated May 11, 1945, from the Chief of the Passport Division to Miss Maria I. Fiorello and there is no objection, I understand.

The Court: Let me look at it (examining the document in question).

It may be received.

(Thereupon a letter dated May 11, 1945, from the Chief of the Passport Division to Miss Maria I. Fiorello was by the Clerk of the Court marked as "Plaintiff's Exhibit No. 3" and was retained by the Clerk of the Court.)

By Mr. Wasserman:

Q. Do you remember what happened in Piedimonte around 1941?

A. Oh, yes. They give me a lot of trouble there.

Q. Speak slowly and tell us everything.

A. In 1941 I had to go to Naples, to the F.B.I., like here, the Police.

Q. The Commissioner of Secret Police?

A. Yes, like the F.B.I.

Q. Like the F.B.I. here?

A. Yes, but they have civilian clothes.

I had to get a permit all the time to go there, because there was a danger—I do not know why—they took me over a—they tell me many times: It is your own fault that you give away your citizenship; they don't bother you no more.

56

Q. You gave away your American citizenship?

A. Yes. They have new laws, because I have to come back there; you want to keep out, and it is your own fault, they told me, and beside that, I went to the Post Office, too, to get my money.

Q. You had money on deposit in the Post Office in Italy?

A. Yes, I had money and I went to the Post Office to get it. When I went there they told me, they said: I do not think you can get it. I will let you know.

They sent me a piece of paper, like a letter, that say American citizen cannot get any money.

It was money, just the same like in the Post Office you have \$100; it is money.

Q. But they gave you a piece of paper or a communication or a slip of paper from the Post Office?

A. Yes: American citizen cannot get any money.

Q. I show you a slip of paper, together with an English translation of it, and I will ask you if that is the slip of paper you received (handing a paper writing to the witness).

A. (after examining the document last above referred to): Yes; that is the first.

57 **Mr. Wasserman:** I offer that in evidence, together with a certified translation of it in the English language.

Would you like to see it (handing the document last above referred to to Mr. Grady)?

Mr. Grady (after examining the document last above referred to): I have no objection.

The Court: Let me see it (examining the document under consideration).

It may be received in evidence.

(Thereupon a document denominated "Postal and Tel. Administration Note" was by the Clerk of the Court marked as "Plaintiff's Exhibit No. 4" and the document stated to be a translation thereof was by the Clerk of the Court marked as "Plaintiff's Exhibit No. 4-A" and they were retained by the Clerk of the Court.)

By Mr. Wasserman:

Q. Now, when you were requested to give up your American citizenship, did they ever request you to sign anything?

A. Yes. I had to sign—they want me to put my name on, but I did not—excuse me: Beside that, they sent me away, too.

Q. When you say “they sent me away” who sent you away?

A. I got a call from the Italian Police and they said: You have to leave your home.

I said: I did not do anything. I have a clean record.
58 They said that was the order from the main office and: You have to go to the town where there is no military.

Q. No military?

A. You have to go to a town where there is no military.

Q. No military forces or installations?

A. No military forces or installations, yes, and they sent me about five miles to another little town, because I cannot go home; I do not know why, because the same thing they tell me in the police station they say: If you give it up it is all right.

Q. If you give up what?

A. American citizenship; you have trouble yourself—and, I was waiting about five weeks, and then some lawyer went to Pistone, present all my records since I was born already, and they sent me back again, and at the same time I have to go once in a while, and they say: You are all right; you stay here.

Q. Was this the time they took away your original Army Discharge Certificate?

A. No. They take that away October 29, 1938.

This was near Christmas. I remember exactly, it was Christmas, 1949, I received—in 1941 my family, I did not do nothing, I never did nothing, and they sent me away because I won't give up American citizenship.

Q. Now, did you ever, after you became a citizen
59 of the United States, in 1920, did you ever apply for Italian citizenship?

A. No, sir.

Q. Did you ever ask anyone on your behalf to get you Italian citizenship?

A. No, sir.

Q. Did you ever sign any oath or take any oath of allegiance to the Italian Government or to the King of Italy?

A. No, sir; no, sir.

Q. Did you ever serve in the Italian Army after 1920?

A. No, sir.

Q. Did you ever consider yourself an Italian citizen after 1920?

A. No, sir.

Q. Now, did the State Department ever advise you that you had lost your American citizenship?

A. When I got a letter from the Consulate.

Mr. Wasserman: At this time, your Honor, I would like to introduce in evidence a letter that has been identified during the pre-trial conference, dated December 29, 1947, from the Chief of Passport Division to Mr. David M. Potts (exhibiting a document to Mr. Grady).

Mr. Grady (after examining the document last above referred to): I have no objection to that.

60 (The document was examined by the Court.)

The Court: It may be received in evidence.

(Thereupon a letter dated December 29, 1947, stated by counsel to have been written by the Chief of the Passport Division, Department of State, addressed to David M. Potts, was by the Clerk of the Court marked as "Plaintiff's Exhibit No. 5" and was retained by the Clerk of the Court.)

Mr. Wasserman: At this time, your Honor, I would like to introduce in evidence an undated memorandum which I personally left with the Italian Embassy in regard to Mr. Bisceglia, together with their report.

I understand there is no objection to this (handing certain documents to Mr. Grady).

Mr. Grady (after examining the documents last above referred to): I have no objection.

The Court (after examining the documents under consideration): That will be received.

(Thereupon a letter denominated by Mr. Wasserman as a communication addressed by him, undated, to the Italian Embassy in regard to the plaintiff, was by the Clerk of the Court marked as "Plaintiff's Exhibit No. 6" and was retained by the Clerk of the Court.)

By Mr. Wasserman:

Q. Now, in 1946—

A. (Interposing): Yes.

61 Q. Did you vote in any of the elections in Italy?

A. Yes.

Q. There were two elections held in Italy, in 1946, one on March 24, 1946?

A. Yes.

Q. And one on June 2, 1946?

A. Yes.

Q. The first election in March was called the administrative election.

Is that right?

A. Yes.

Q. And the election held on June 2, 1946, was called a political election.

Is that right?

A. Yes.

Q. Will you tell the Court under what circumstances—what happened in the first election?

A. The first election—

Q. (Interposing): The first election was an administration or an administrative election?

A. Yes.

Q. Who were you voting for then?

A. And, there was an engineer. There was an engineer—

Q. (Interposing:) A construction engineer?

62 A. We used to work together, with the English people, and he went for Mayor.

Q. He was running for Mayor?

A. And he met me and he said: Let's go. Give me the vote, and I did not think there was anything wrong, and he called me by my name, "Sisto", and he said: Give me the vote.

I know him well, and he was a nice fellow, and construction engineer for the bridge over there, and when he brought me in the Hall, he said: "Don't fool me. Give to me—I want the vote."

I went over there.

I never think anything wrong, nothing wrong.

Q. What—

The Court (Interposing): Mr. Middlemiss, will you read what the witness has just said?

The Reporter (reading):

"Q. He was running for Mayor?

A. And he met me and he said: Let's go. Give me the vote, and I did not think there was anything wrong, and he called me by my name, 'Sisto', and he said: Give me the vote.

I know him well, and he was a nice fellow, and construction engineer for the bridge over there, and when he brought me in the Hall, he said: 'Don't fool
63 me. Give to me—I want the vote.'

I went over there.

I never think anything wrong, nothing wrong."

By Mr. Wasserman:

Q. Now, will you tell us about the political election in June of 1946, what happened then?

A. That time there was a lot of propaganda.

I did not know what they do: Somebody said: You have to vote, otherwise get in trouble. Somebody—they always say: "You have to vote, otherwise you lose civil rights."

Q. You would lose your civil rights if you did not vote?

A. They used to say that it was very bad for you because you cannot go back at all to the United States and you have to do that, and he says this: You are a fool, you are crazy, after all it is a liberal party and it is American party, and you vote for the American just the same, and it don't make no difference at all.

I don't know what to do.

I don't know myself first what to do.

The first day I did not vote.

Q. The first day you did not vote?

A. I think all night; I don't know what to do. I could not sleep at all.

The next day I went to vote—I want to be sure.

64 Q. Did they tell you anything about ration coupons?

A. They used to say that I must look out for my civil rights; they say that if they take away the civil rights you cannot do nothing at all; the clerk, they say, they starve me, and all.

Mr. Wasserman: At this time, your Honor, I would like to offer in evidence—

The Witness (Interposing): Somebody used to say something, but the way I understand, the Liberal Party was the American Party.

Mr. Wasserman: At this time, your Honor, I would like to offer in evidence House Report No. 1469 with reference to which we stipulated in the Pre-Trial Stipulation, starting at Page 5, and running through Page 7, which describes the background of the propaganda and also includes the Italian law with reference to the pressure that was exerted in connection with these elections.

Mr. Grady: I have no objection to the competency of the report, but I do object to the relevancy of it.

The Court: I do not see any need in going beyond it. If he has testified—

Mr. Wasserman (Interposing): If duress was exercised and a legal sanction was imposed, and people threatened with loss of their civil rights if they did not vote, such voting would not be valid, and the Courts have held that if
65 one votes under duress and is naturalized under duress, under those circumstances, it would not be—

The Court (Interposing): That would be a question of the interpretation of the statute, but I do not think any reports of Congress have anything to do with that.

Mr. Wasserman: But here is a Congressional Committee which went to Italy and investigated this particular situation. This report contains an Italian law on the subject and shows just what sanctions were imposed upon people if they

did not vote, and it has been the subject of testimony, and I think it is properly—

The Court (Interposing): The Italian statute may be relevant; I do not know.

Mr. Wasserman: If your Honor wishes, I would be happy to read the pertinent portions, and I still think your ruling—

The Court (Interposing): I cannot go behind the language of the statute.

Congress is able to say what it wants to say.

Mr. Wasserman: I realize that.

(A document presented by Mr. Wasserman to the Court was examined by the Court.)

The Court: Was this before the passage of the Bill or after the passage of it?

66 Mr. Wasserman: The Bill is pending in Congress, has passed the House and has been reported out of the Judiciary Committee and is before the Senate.

The Court: It has passed the House?

Mr. Wasserman: Yes.

The Court: I cannot see that anything the House did after that is relevant.

Mr. Wasserman: There is pending a bill to restore citizenship to those who lost it solely by voting in Italian elections.

The Court: Has that bill been passed?

Mr. Wasserman: No, not by the Senate.

The Court: What is the law is what the Court is bound by. I exclude the testimony.

Mr. Wasserman: May I ask your Honor—

The Court (Interposing): The question is simply this:

The Courts have held, and have already determined the correctness of it, that where a Bill is passed, as to the interpretation of the Bill you may consider the reports of the House and Senate, but, after the Bill is passed, the reports in connection with another Bill has nothing to do with it.

Mr. Wasserman: It is my understanding that the Courts may even take judicial notice of findings made by the Congress.

The Court: It may be that the Court can take judicial notice if the reports of Congress have any such thing in it, but the facts are not binding on the Court.

67 I exclude the testimony.

Mr. Wasserman: May I ask if counsel for the defendant will concede that the Italian law with regard to voting in Italy was as I stated to have been, in other words, that on March 12, 1946, the Italian Government issued an order?

The Court: Ask counsel.

(At this point there was a colloquy had between counsel for the respective parties which, by direction of the Court, was not recorded, and following which this then occurred:)

Mr. Grady: Your Honor, I will have no objection to counsel indicating what the Italian law was at the time, if it can be shown that this witness was influenced by that law.

I object to it until it is connected with this case.

Mr. Wasserman: I would like to say—

The Court (Interposing): I will hear what the Italian law was at that time. I am not ruling that it will control the decision in this case, but I will hear what it was.

Mr. Wasserman: I am reading from Page 5 of this report. On March 12, 1946, the Italian Government issued an order, Article I of Title 1 of the order of which stated that a list of those who abstained from voting in the election of June 2, 1946, of the Constitutional Assembly, without a justified motive, shall be exposed for the duration of one month in the City Hall and for the duration of five years the
68 words "did not vote" shall be mentioned on the certificate of good behavior for those who abstained from voting for good motive.

The Court: Let me see that.

Mr. Wasserman: It is at the bottom of Page 5 (handing the document to the Court).

There is another Italian statute of similar purport.

(Certain documents submitted by Mr. Wasserman were examined by the Court.)

The Court: Well, this election that he voted at: Was this the election for the Constitutional Assembly?

Mr. Wasserman: Yes, sir: He testified that he voted at the election of June 2, 1946.

The Court: Well, it says "with a justified motive"—very well.

Mr. Wasserman: May I also read—

The Court (Interposing): I will admit that portion which you have just read.

(Thereupon a memorandum relating to the laws of Italy, submitted by counsel for the plaintiff was by the Clerk of the Court marked as "Plaintiff's Exhibit No. 7" and was retained by the Clerk of the Court.)

By Mr. Wasserman:

Q. Now, in 1946, did you again have occasion to go to the American Consul?

69 A. Yes.

Q. Will you tell the Court what happened there?

A. I got a letter from the American Consul to be there and bring my vote certificate and the certificate from the municipality showing I was voting or not voting, and the vote certificate I do not have any more, because it is not there—I do not think you have it any more.

I went to the municipality and they give it to me, because it is true that I was voting.

When I went to Naples I stayed by the building line, to enter early, to get in a line, and a young fellow was there and we talked, and he telling me: You go to America; you are American citizen? Yes. Did you vote? Yes. You cannot go any more.

I left a little bit—I left that Consulate.

They not send to me any more.

I was worried.

The Court: Speak out if you want me to pass on this case.

Mr. Wasserman: Shall I repeat his answer to the question?

The Court: No. He lowered his voice; I cannot hear what he has said and if he wants me to pass on the case I must hear it.

Mr. Wasserman: You will have to speak so the Judge can hear you.

70 The Witness: He tell me: You cannot go any more if you vote; if you vote you cannot go—I was worried, and he say: If you give me five hundred lira to me, I will fix you up. As soon as I hear that, I think he belongs to the office, and five hundred lira is nothing, and I said: I have enough money, so I went there all right.

I said to myself: All right, maybe he knows the people, how to make it over there, and he was a nice dressed, nice looking fellow, in a nice suit, and he look at my certificate and he said: That is easy; I will fix it up, which I think he will do, and I have a call from the office; they call me up over there, and I bring it right in, the certificate, I bring it right in, and I look at him and I think he goes in the building, and he went outside, and he come back, maybe less than ten minutes, and he said: All is fixed up. If anyone ask you, you tell them you not vote. They will ask you a couple of times, and they won't bother you no more—it is all fixed. Don't forget. Tell them you have not vote.

All right. I tell him "All right", and he said "I will see you outside." He said: Everything goes all right. I said if it goes all right I will give you more money.

He said: I will see you outside.

When I get upstairs in the Consulate, as soon as I give my certificate he ask me—I am not able to tell a lie—
71 he look at my face, and he tell me to tell the truth, and I said "No, I never vote", and he said "You have voted; why don't you tell me the truth?"

A couple of times I tell him I no vote, and then I sweat and shake and he find it out, and he said: I will write that I find it out, and I will write to your town and I will find it out, is what he said.

So I went on the outside and I look for the fellow again and I see him no more, the fellow I give the five hundred lira to—there are a lot of crooks there.

By Mr. Wasserman:

Q. What happened after that?

A. After a couple of weeks, a month, I get a letter there to me.

Q. From whom?

A. The Consulate, a month later—I don't remember exactly; I remember the last War and he said: You are no more a citizen of the United States. That is all I remember—the last word.

Then I start to write back again over here to my nephew and my niece and they try to help me out.

Mr. Wasserman: I have no more questions.

72 Examination by Counsel for the Defendant.

By Mr. Grady:

Q. Mr. Bisceglia, you were born in Italy?

A. Yes.

Q. When?

A. August 6, 1894.

Q. And you were naturalized in the United States in 1920?

A. Yes.

Q. As an American citizen?

A. Yes.

Q. And the last time you returned to Italy was in 1936. Is that right?

A. Yes.

Q. In July, July 25, 1936?

A. Yes.

Q. Now, did you live in Italy for two years continuously after July 25, 1936?

Will you answer that question "Yes" or "No" so that this gentleman (indicating the Reporter) can write it down?

A. I cannot understand.

Q. Did you live in Italy for two years after July 25, 1936?

A. Yes.

Q. Now, on September 10, 1938, you were issued a passport to immediately return to the United States, were you not—in 1938?

Were you or not issued a passport to return to the United States in September, 1938?

A. Well, I left the Consulate—I don't know what he did with my passport.

Q. You do not know if one was ever issued?

A. I left everything in the Consulate office, passport, American citizen papers, and everything.

Q. Did anyone ever tell you in 1938 that you were authorized to return to the United States?

A. Yes: I got a letter on October 13, 1938, and the letter is to say that I had to sell, first, the property I had over there; sell the property, and then I had to come back to the United States immediately with the whole family.

Q. Why did you not return to the United States then?

A. I did not return to the United States then because the money—I was glad to sell the property—because I sold already a piece of property in 1938, but the rest of the property I had to sell I was not able to bring the money over here.

I explained that to the Consul, too, if I sell the property I could not take the money to the United States.

I did not know why.

And he told me to write—it is impossible to bring
74 Italian money over here.

That is why I take too long; I was hoping to change the law in another year and I can bring the money, because it was bad for me to sell property over there and I could not take the money with me, and that is why I did not make it at the time.

Q. Now, you owned real estate, real property, in Italy at that time—a farm?

A. Yes, a farm and a house; but the farm I sold it in 1938, in 1938—May 24, 1938, I sold it, part of it, and the rest I have got yet.

Q. Do you still own a farm there?

A. No; just the property in the town, in the city that I have got there.

Q. Now, what occupation—do you understand what the word “occupation” means?

A. Yes.

Q. What occupation have you been following since October, 1936, when you went to Italy?

A. I had a little piece of garden we called an orchard: I used to work for myself, my own property.

Q. Were you a farmer?

A. I was a farmer—that is back land.

75 Q. Did you have to work hard in that pursuit to make a living?

A. No, I had a little money; a little work over there I got along all right with, and, besides that, my wife got a grocery store. The grocery store—sometimes I make myself money and get along pretty good.

Q. One of the reasons that you did not return to the United States in 1938 was because you wanted to take some hot baths in Italy.

Is that right?

A. Yes, that is right.

Q. To cure your rheumatism in your knees?

A. That is right.

Q. Did it ever occur to you that there were hot baths in the United States?

A. I do not know. I think there is over here too, but I know of people over there, the place over there, and I rather go over there.

Q. Now, in '37 you obtained an Italian identity card describing yourself as an Italian citizen.

Is that correct?

A. Well, they sent to me, after I did not have any more passport, there was a lady, a friend of my wife, when you go to Naples you need it, and she bring it to me, and I pay no attention to that.

76 I do not know why it was.

Q. Do you recall whether you were described as an Italian citizen on that identity card?

A. No one ever told me anything. If I know that I never care for the card because the card, like, I can lose everything.

Q. Do you remember applying for and receiving an identity card on April 29, 1934, in which you were described as an Italian citizen?

How many identity cards have you gotten?

A. I have two identity cards.

Q. You have two identity cards?

A. Yes, I got two.

Q. What was your nationality listed as on the two identity cards?

A. Well, they put "Italian" because I did not pay any attention.

I never looked at it.

They put it on that way, but I no sign anything.

I do not think you can lose like that.

Q. You voted in the election on March 24, 1946?

A. Yes.

Q. And you also voted in the election on June 2, 1946?

A. Yes.

Q. Did anyone compel you to vote in those elections?

77 Do you understand what the word "compel" means?

A. No, I do not.

Q. Did anyone force you to vote in either of those elections?

A. They explain to me, but never force me very bad. They say: You have to vote; it is necessary to vote.

Q. Did you vote because you wanted to vote?

A. I never care about it. I was afraid to lose my civil rights.

I was afraid, because there was bad feeling—it is very hard to get something; they used to say: Nobody vote, this and the other, and it would scare me.

Q. Were you afraid that anyone would hurt you physically?

Were you afraid that anyone would hurt your body if you did not vote?

A. I was afraid of my civil rights; maybe they take them away and it is wise for me.

Q. What did you understand your civil rights to be?

A. It looked like I go to jail, like something is wrong.

Q. Did anyone tell you they would put you in jail if you did not vote?

A. They used to say that they send you here, and that they used to say a lot of things.

Q. Listen to my question, please:

78 Did anyone ever tell you that you would be put in jail if you did not vote?

A. They never tell me personally, but the clerk in the office used to say that.

Q. When you went to the Consul in Naples, in 1946—

A. (Interposing:) Yes?

Q. (Continuing:) You did tell the Consul that you had not voted.

Is that correct?

A. Yes, but it was not my fault—

Q. (Interposing:) Can you answer "Yes" or "No"?

A. Yes, yes.

Q. And you were later called back to the Consul in Naples, were you not—you were later called back to the Consul in Naples in January, 1947?

A. Yes.

Q. And the Consul told you, did he not, that they had evidence that you had voted and that you had changed the certificate which the municipal authorities had given you?

A. I explain everything to them.

Q. If you can answer my question first, then you may explain:

Did the Consul tell you that in January, 1947?

A. Yes, he told me: You did this and the other.

I explain what the man did to me downstairs.

79 Q. And did you sign an affidavit for the Consul setting forth that fact?

A. I guess so; I guess so, because many times I signed.

Mr. Grady: I will ask that this (indicating a paper writing) be marked as "Defendant's Exhibit No. 1 for identification".

(Thereupon a document which was later described by counsel for the defendant as an affidavit signed by the plaintiff for the American Consul in January, 1949, being a photostat copy of an original thereof, was by the Clerk of the Court marked as "Defendant's Exhibit No. 1 for identification" and was retained by the Clerk of the Court.)

By Mr. Grady:

Q. I show you what has now been marked "Defendant's Exhibit No. 1 for identification" and I will ask you if that is the affidavit you signed for the Consul in January, on January 17, 1949—a photostat copy of it (handing the document under consideration to the witness).

A. (After examining the document last referred to.) Well, I do not know: I cannot read English.

Q. I am sorry—you cannot read English?

A. No, not even Italian: I go to school only a couple year.

Q. On the second page, I show you a signature and
80 I will ask you if that is your signature (handing the document in question to the witness).

A. (After examining the document last above referred to.) Yes; I can say that, but I cannot understand the rest.

The Court: I cannot hear what he is saying.

By Mr. Grady:

Q. Is it your signature?

A. (After examining the document further.) Yes.

Mr. Grady: I offer in evidence this paper which has been marked for identification, and ask that it be marked "Defendant's Exhibit No. 1 in evidence", your Honor. It purports to be an affidavit of the witness sworn to before the American Consul in Naples on the 17th of January, 1949.

(Thereupon the affidavit referred to dated January 17, 1949, was by the Clerk of the Court marked as "Defendant's Exhibit No. 1" and was retained by the Clerk of the Court.)

• • • • •

81 The Court: I have read the first page.

Mr. Grady: I will read the second page, but will read the last paragraph on the first page.

Mr. Wasserman: For the record—

The Court (interposing): Well, suppose the whole

affidavit is placed in the record, since I have read part of it.

.

82 By Mr. Grady:

Q. Mr. Bisceglia, when you stated in that affidavit that there is some exaggeration in the contents of Paragraph 9, were you referring in Paragraph 9 of the complaint—I will withdraw that question and proceed this way:

I show you Paragraph 9 of the complaint in this action—do you understand or read any English?

A. No.

Q. Would you like me to read that to you?

A. I understand a little.

Q. Paragraph 9 of the complaint in this action reads:

“That on March 24 and June 2, 1946, the plaintiff participated in Italian political elections but was compelled to do so by reason of the undue influence and pressure exerted upon him by the officials of the Italian Government. That the plaintiff did not voluntarily participate in the said elections.” Do you understand what I have read to you?

83 A. No, I do not understand.

Q. When you stated in your affidavit that Paragraph 9 was exaggerated, were you referring to this paragraph which I have just read to you?

A. I do not understand that.

Q. You cannot understand it?

A. No.

The Court: Did he sign that complaint himself?

Mr. Grady: No, your Honor, he did not.

The Court: Then, it is just “an exaggeration” of his lawyers—is that it?

Mr. Grady: If it be “an exaggeration”.

It is a legal conclusion of his lawyer.

By Mr. Grady:

Q. Mr. Bisceglia, did you ever request that your name be removed from the list of eligible voters?

In other words: Did you ask to have your name taken off the voting list?

A. No, no.

Mr. Wasserman: I object to the question: There is no evidence as to whether his name was on the voting list.

The Court: I overrule the objection.

Answer the question.

The Witness: No, I never did.

84 I say "No" before, if I understand you good.

I never sent nobody——

Mr. Grady (interposing): I would like to go into this just briefly, even on the chance that it is repetitious.

The Court: Do you expect to show that there was a list of voters?

Mr. Grady: No, I do not.

The Court: Then I strike out that question and answer.

Mr. Grady: Let me pursue this, your Honor, if I may:

By Mr. Grady:

Q. Did I understand you to testify in answer to Mr. Wasserman's questions that when the War broke out in Italy they asked you to move away from the town where you were living?

A. Yes: They sent me to another town.

Q. That was because you were an American citizen?

A. Yes.

Q. But, after five weeks, you showed them the papers you had and they allowed you to return?

A. Yes, and I had to go to the Police once in a while and I show I stay home.

Mr. Grady: I have no further questions.

Mr. Wasserman: I have no further questions.

The Court: Step down.

(The witness thereupon was excused and retired from the witness stand.)

85 Mr. Wasserman: The plaintiff rests.

Mr. Grady: If your Honor please, I believe I offered this exhibit prematurely.

I now formally offer "Defendant's Exhibit No. 1".

The Court: It has already been marked. It will be received.

Mr. Grady: I will ask the Court to take judicial notice of the Italian law——

The Court (interposing): I cannot take judicial notice of the Italian law, but, as to that part that you have offered, I will consider it.

I am supposed to know the law of the United States and the law of every state in the United States, but not the Italian law.

Mr. Wasserman: I will stipulate that the Italian law of June 13, 1912, is as set forth in this particular volume and I have no objection to having counsel read it into the record.

Mr. Grady: Would you prefer I read it or hand it up to you?

This is a volume dealing with the Nationality Laws by Flurnoy and Hudson, Volume 1929, Pages 364-5, and I call the Court's attention particularly to Article IX, Section 3.

(The volume referred to by counsel was examined
86 by the Court.)

The Court: Very well.

Mr. Grady: I have no further evidence, your Honor.

Mr. Wasserman: The plaintiff rests.

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87 The Court: I will take the case under consideration.

Mr. Grady: Shall we leave the exhibits with your Honor?

The Court: Yes.

The Court will adjourn until tomorrow morning at ten o'clock.

(Thereupon at 3 o'clock p.m. the Court adjourned until 10 o'clock a.m., Wednesday, November 29, 1950, for the consideration of such other business as might be presented to it.)

88

PLAINTIFF'S EXHIBIT No. 2a

Registered
Naples, Feb. 1, 1940.

Bisseglie, Sisto
130 WEC. Jr. IC

Mr. Sisto Bisseglie, son of the late Guiseppe
Piedimonte d'Alife, (Benevento)

I refer to previous correspondence concerning the matter of an American passport prepared in this Consulate General on April 29, 1938, and I am able to inform you that whenever you can comply with the requirements (or regulations) issued by the State Department in Washington which were communicated to you in the letter of this Office dated October 18, of the same year, you will be able to get in touch once more with this Office for the purpose of considering anew your situation. In the meanwhile, I return to you your Citizenship Paper which you can show at the proper time.

With the greatest esteem,

For the American Consul General,

THOMAS D. BOWMAN,

WILLIAM E. COLE, JR.,

American Vice Consul.

Enclosure:

1. Citizenship paper #1424577 issued by the Supreme Court of the State of New York in New York on May 21, 1920.

Filed Feb. 28, 1951, Harry M. Hull, Clerk.

I certify that the above is a complete and accurate translation of the original Italian.

/s/ NICOLA CERRI, JR.

Subscribed and sworn to before me this 8th day of November, 1950. Seal.

/s/ Wm. H. HUTCHERSON,

Notary Public, D. C.

My Commission Expires Sept. 14, 1955.

89

PLAINTIFF'S EXHIBIT No. 3

DEPARTMENT OF STATE
WASHINGTONIn reply refer to
130-Bisseglio, Sisto

May 11, 1945.

Filed Feb. 28, 1951,
Harry M. Hull, Clerk.Miss. Maria I. Fiorillo.
1253 Crosby Avenue,
New York 61, N. Y.

My dear Miss. Fiorillo:

The Department has received your unsigned letter dated April 25, 1945 concerning your desire to bring to the United States Mr. and Mrs. Sisto Bisseglio and their three children.

The Department has a file concerning Sisto Bisseglio from which it appears that he was naturalized as an American citizen by the Supreme Court of New York at New York on May 21, 1920. It is suggested that Mr. Bisseglio be advised to call at the American Consulate General at Naples and apply for registration as an American citizen in order that his eligibility to receive passport facilities for the journey to the United States when transportation is available may be established. Mr. Bisseglio's children may have a claim to American citizenship and if so, their names may be included in their father's application. Inasmuch as there is nothing to show that Mr. Bisseglio's wife has a claim to American citizenship, it is suggested that she inquire at the Consulate General concerning the procedure she should follow in order to apply for entry into the United States. It may be added that in lieu of documentary evidence of Mr. Bisseglio's naturalization as an American citizen he may refer in his application to the Department's file concerning his case.

Sincerely yours,

/s/ R. B. SHIPLEY,
Chief, Passport Division.

90

PLAINTIFF'S EXHIBIT No. 4a

Translation

Postal and Telegraph Administration note states:

Mr. Sisto Bisceglie is informed that as a result of new regulations, persons of American citizenship are not allowed to cash interest-bearing bonds. For your information.

Seal bears date 13 7 41 and the words "Piedimonte d'Alife Benevento".

Filed Feb. 28, 1951,
Harry M. Hull, Clerk.

DISTRICT OF COLUMBIA,

Washington, D. C., ss:

Nicola Cerri, Jr., being duly sworn, deposes and says that he is familiar with and understands both the Italian and English languages. That the above is true and accurate translation of the attached note in the original Italian.

Subscribed and sworn to before me this 13th day of November, 1950. Seal.

/s/ MILDRED G. MURNAN.

My Commission expires Nov. 1, 1952.

91

PLAINTIFF'S EXHIBIT No. 5

Department of State, Washington

December 29, 1947

Filed Feb. 28, 1951. Harry M. Hull, Clerk.

In reply refer to Y130-Bisseaglio, Sisto.

My dear Mr. Potts:

The Department refers to your letter of July 25, 1947 addressed to the Honorable James Clement Dunn, American Ambassador, Rome, Italy concerning Sisto Bisceglia, (Bisseaglio).

The records of the Department show that on October 24, 1945, Sisto Bisseaglio applied at the American Consulate General at Naples, Italy for registration as an American

citizen. It appeared from the information furnished that Mr. Bisseglio (Bisceglia) was naturalized as an American citizen before the Supreme Court at New York City on May 21, 1920 and that he had resided in Italy from June 1929 to March 1930, from July 1933 to May 29, 1935 and since July 1936. During his residence in Italy Mr. Bisseglio obtained Italian identity cards in which his nationality was described as Italian in 1937 and in April 1944, and he voted in the Italian political elections held in Italy on March 24 and June 2, 1946.

Mr. Bisseglio reacquired Italian Nationality under Italian law, two years after he returned to Italy. The Department was of the opinion that by his actions Mr. Bisseglio had evidenced an acceptance of the status of an Italian national and that he must be held to have been naturalized in Italy with the result that he lost nationality of the United States through the operation of Section 2 of the Act of March 2, 1907 which is quoted below for your information:

“That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.”

A certificate of expatriation was submitted in Mr. Bisseglio's case and on October 7, 1947 a copy of the certificate was forwarded to the Department of Justice, together with the expatriate's naturalization certificate.

Since Mr. Bisseglio is not an American citizen it will be necessary for him to enter the United States as an alien in compliance with the immigration laws of this country. The American Consular Officer at Naples will be in a position to advise him concerning the procedure. His wife, Maria Concetta Sposato, to whom he was married on March 9, 1935 and who was born in Italy, is also an alien and will necessarily have to enter the United States as such. His daughter, Caterina, who was born at New York City on December 25, 1935 acquired American citizenship at birth and therefore is entitled to an American passport for her

return to the United States when arrangements for such return are completed.

92 Mr. Bisseglio's daughter, Maria, who was born in Italy prior to her father's expatriation, also has a claim to American citizenship and is eligible to be issued or included in an American passport valid for travel to this country. However, the son, Guiseppe, was born in Italy subsequent to his father's expatriation and therefore has no valid claim to American Citizenship.

Sincerely yours,

(S.) R. B. SHIPLEY,
Chief, Passport Division.

Enclosure: Copy of this letter.

93 PLAINTIFF'S EXHIBIT No. 6

Ambasciata D' Italia, Washington, D. C.

September 31, 1950

No. 10857. Pos.A-82(alf).

Jack Wasserman, Esq.,
501 Thirteenth St. N. W.
Washington 4, D. C.

Dear Mr. Wasserman,

I am sending you herewith enclosed two memoranda on the questions concerning Antonio Altieri and Sisto Bisceglia.

Believe me,

Yours very truly

(S.) — —.

2 encl.

Filed Feb. 28, 1951. Harry M. Hull, Clerk.

94 Memorandum Re: Antonio Altieri

1) The Fascist Federation of Agriculturists was not restricted to Italian citizens. Non-Italians could belong to it.

2) Art. 9 Sec. 3 of the Italian law on citizenship estab-

lishes that he who lost the Italian citizenship spontaneously, may reacquire it after two years of residence in Italy.

3) No: identity cards were also issued to foreigners.

95 Memorandum Re: Sisto Bisceglia

Art. 9 Sec. 3 of the Italian law on citizenship establishes that he who lost the Italian citizenship spontaneously, may reacquire it after two years of residence in Italy.

96 EXCERPTS PLAINTIFF'S EXHIBIT 7

Union Calendar No. 617

81st Congress, 2d Session. Report No. 1469

Loss of United States Citizenship by Voting in Italian Elections

Report of a Special Subcommittee of the Committee on the Judiciary House of Representatives, Pursuant to H. Res. 238. A Resolution to Authorize the Committee on the Judiciary to Undertake a Study of Immigration and Nationality Problems

January 6, 1950.—Committed to the Committee of the Whole House on the State of the Union and Ordered to Be Printed

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97 III. STUDY

Prior to its departure for Italy, the special subcommittee obtained considerable factual information through hearings held on private legislation, through exchange of correspondence with the Departments of State and Justice, and through testimony received from high officials of the Italian Embassy in Washington.

The study in Italy was conducted from September 22 through October 5, 1949. Conferences were held with the United States Ambassador in Rome, Mr. James Clement Dunn, and his staff, and with ranking American consular officials: Mr. Joel C. Hudson, consul general in Milan, Mr. George P. Waller, consul in Florence, and Mr. George L.

Brandt, consul general in Naples. Similar conferences were held in Rome with representatives of the Italian Government.

The scope of the special subcommittee's study could be summarized as follows: (1) The extent of coercion and pressure exerted upon voters from within and without Italy; (2) general state of mind of the voters preceding and during the elections; (3) familiarity with the terms of section 401 (e) of the Nationality Act of 1940 among American citizens residing in Italy and their awareness of the consequences of casting their ballot; and (4) number of former American citizens affected by the operation of section 401 (e) of the Nationality Act of 1940.

A. ITALIAN BACKGROUND

There were two political elections held in Italy after World War II.

1. On June 2, 1946: Election to the Constitutional Assembly and a plebiscite offering the Italians the choice between the republican and monarchical forms of government;
2. On April 18, 1948: Election to the first Legislative Assembly.

The enactment of Italian electoral laws governing the elections and the plebiscite was preceded by an intense campaign tending to emphasize in the wording of the legislation itself the importance and significance of the voting.

According to Italian official testimony received by the subcommittee, this campaign tried to—

“hammer into the head of the voter the notion that any abstentionist would be considered a shameful example of lack of civic-mindedness, and that he will be punished.”

In fact, on March 12, 1946, the Italian Government issued an order entitled “Supplemento Ordinario Alla Gazzetta Ufficiale, n. 60 del 12 Marzo 1946.” Article 1 of title 1 of the order stated that—

“the list of those who abstained from voting in the election (June 2, 1946) of the Costituente (Constitutional Assembly)

98 without a justified motive shall be exposed for the duration of 1 month in the city hall and, for the duration of a period of 5 years, the words "DID NOT VOTE" shall be mentioned on the certificate of good behavior of those who abstained from voting without a justified motive."

However, in the 1946 election and plebiscite strongest pressure was brought upon the voters by left-wing parties (Communists and pro-Communists). The rather mild legal sanctions proclaimed on March 12, 1946, played a secondary role in their widespread and well-organized campaign of intimidation closely bordering on terrorism. It has been ascertained by the subcommittee that threats were made to do bodily harm, to discharge abstentionists from their employment, or to take away their food-ration coupons in communities dominated by Communists or pro-Communists. No instances are known, however, where any such threats were actually carried out.

With the approach of the election held on April 18, 1948, and with the general appreciation of the high stakes involved in this election, renewed pressure was brought upon the potential voters from both sides, to wit, from the Communists and their sympathizers and from those who were interested in a democratic form of government in Italy. An analysis of the debates held in the Italian parliamentary bodies on the electoral laws shows that the tendency to give a compulsory character to the balloting has manifested itself quite clearly. Many of the members of Parliament have insisted on imposing severe penalties on those who would fail in their duties as electors. Eventually, however, no such penalties were written into the laws but the final text of the law on the Italian parliamentary elections (Law No. 26 of February 5, 1948), though excluding the imposition of penal sanctions against abstentionists, stressed the moral and political character of the obligation to vote and incorporated the provisions of the order of March 12, 1946, "intended to point out to public contempt persons abstaining from the vote."

Thus, section 3 of Law No. 26 of February 5, 1948, reads as follows:

“The exercise of the vote is an obligation which no citizen can evade without failing in one of his specific duties toward his country.”

Section 90 of the above-mentioned law reads:

“The lists of persons who, without a justified motive, have failed to vote in the elections of the House of Deputies will be posted for the duration of a month in the town halls of their communities.”

Also, Law No. 26 provided that an entry reading “abstained from voting” was to be inserted for a period of 5 years in all certificates of good conduct delivered by every Italian community to persons who, without a justified reason, had failed to cast their ballot. Such entry has been construed as a charge against the good conduct of the individual.

The subcommittee was able to ascertain that in a great majority of cases the above-outlined sanctions of the law were enforced with leniency but the mere existence of them must be considered as an instrument of legal pressure.

One has to bear in mind the fact that the posting of the names of abstentionists in the city halls of their communities caused at least severe embarrassment for persons so exposed, inasmuch as it made them likely to be suspected as pro-Fascists, inimical to the new democratic processes re-introduced in Italy after almost 25 years of a dictatorial regime. It also led many Italians to believe that the
99 often-heard threat of having their food-ration coupons withdrawn would be enforced once the fact of their abstention was publicly known.

Equally embarrassing was the threatened entry to be made on certificates of good conduct described above. Such certificates are required in Italy in many administrative operations, such as issuance of driving or hunting licenses, and, above all, such documents are generally required by potential employers, public or private, from applicants for a position. It was generally understood that the entry pointing out the failure of the individual to cast a ballot would represent a derogatory qualification and that it would be a great disadvantage to the person concerned.

The subcommittee is of the opinion that while in large cities these moral and limited legal sanctions might have had a small effect, they nevertheless caused much more serious consequences in smaller communities where the individual so singled out had every reason to believe that he would become the subject of public contempt and that his economic and social interests would be put in jeopardy.

The political pressure was, in any event, much stronger than the threatened but practically unenforced legal sanctions. The Italian democratic parties and groups did not spare any effort to increase the number of votes cast, believing firmly that a heavy vote would assure the defeat of the Communists. Similar beliefs were held outside of Italy. * * *

100 * * *

2. Present situation in Italy

Dual citizenship exists in Italy. There is no provision in the Italian law that Italian citizens who have lost their nationality by becoming naturalized in a foreign country, and their children, automatically lose their Italian citizenship. There is, moreover, no provision in Italian statutes under which such expatriated Italians must give notification of the change of their citizenship status to the Italian Government and, therefore, their names continue to appear on the lists of voters and, incidentally, also on the lists of persons subject to compulsory military service. Consequently, the great majority of American citizens of Italian origin, residing in Italy during the 1946 and 1948 election period, received at their residence or at the home of their parents a summons to vote containing the above-mentioned quotation from the Italian Law No. 26 of February 5, 1948.

On the other hand, the special subcommittee has ascertained that the overwhelming majority of these people were not aware of the implications of their taking part in the elections. They simply did not realize that by voting in the Italian political election or plebiscite they were committing an act incompatible with their status as American citizens. There were two reasons for that: (1) the American campaigns of persuasion and inducement to vote made them

believe that by taking part in the elections, they would be performing not only a legitimate and legal act, but that they would be serving the interest of the United States; and (2) few American citizens in Italy could know that a new Nationality Act became effective on January 13, 1941. World War II broke out on September 1, 1939, and communication facilities throughout a large portion of the world were disrupted as a consequence. The paramount importance of war news left only casual space, if any, to be given in the Italian press to changes in the nationality laws of the United States.

American consular officers abroad, particularly in Italy, have frequently pointed out that the persons concerned had no knowledge whatsoever that by participating in foreign political elections or plebiscites they would lose their citizenship in the United States. American diplomatic and consular officers state unanimously that the most frequent statement made by petitioners for American passports in Italy is to the effect that they voted not only in ignorance of the effect upon their citizenship status, but also—

“upon the advice of high American officials, writers, radio broadcasters, relatives, and friends in the United States who were interested in preventing Communists from taking control of the government in Italy.”

* * * * *

101

DEFENDANT'S EXHIBIT No. 1

Affidavit

City of Naples
Consulate General of the
United States of America, ss:

I, Sisto Bisseglio (Bisceglia), born at Alife (Benevento) on August 2, 1894, do hereby solemnly swear that the following facts are true:

I have come today at this Consulate in order to ask for an identity certificate for my travel to the United States.

I do not even know what this certificate means, but

I have been suggested to ask for this travel document by my nephew, Leonardo Pinto, who is residing at 1253 Crosby Avenue, Bronx, 61, New York and who is taking care of my case. I have received the paper which I am exhibiting herewith which apparently is in connection with a procedure against the American Government. My intention in having my nephew do whatever he thought was in order that I might have my American citizenship restored, and so be able to return to the United States.

As a consequence of a letter received by this office on August 2, 1946 warning me of Section 404(a) of the Nationality Act of 1940, I came at this Consulate on September 27, 1946.

Because in that letter it was stated also that I had to produce a document showing whether I voted or not in the 1946 elections or bring in the unused electoral certificates I went to the Mayor and I asked for a certificate to the effect that I voted, because that was the truth. I do not remember now whether in the certificate was shown that I voted on both the Administrative and Political elections or only in this last one. I think that the certificate referred only to the Political elections. Presumably the Mayor did not give any importance to the Administrative elections. What I remember is the fact that they had also some difficulties in giving out that certificate and maybe to facilitate the matter I may have requested to put down only the information regarding the Political elections. Shortly after having obtained such certificate I came to Naples in order to call at this Consulate.

While on September 27, 1946 I was standing in line outside of the Consulate in order to get in, I was discretely approached by a young man about 20 year old, rather tall and handsome, dark-haired. He was rather clever and cleanly dressed. He asked me whether I was an American citizen. To my affirmative answer he asked me "did you vote?" I said "yes" and then always in a way that we could not be listened by others, he told me "By voting your American citizenship will

be canceled but if you want, I can help you." He looked then at my certificate which I had in my hand and told me "if you give me 500 lire I arrange everything", making me understand that he was well known at this office. At the same time he took the certificate regarding the electoral information, accompanied me in the Consulate and after he saw me seated in the second waiting hall of this office, told me "if you are questioned by anyone in this Consulate, answer always that you have never participated in any elections in Italy, adding that within a few minutes he would have brought me back the certificate arranged in a way that would show that I did not vote." Within a few minutes he brought me the certificate which had been altered by adding a "non" which read "non ha votato" instead of to read, as before, "ha votato"—. Before entering this Consulate I already had given that man 500 lire telling him that if everything would have turned out for the best I would have given him more. When

102 I left the Consulate I looked around, but the man was no more there. He told me also that he had helped many other persons in the same way. When I was sent up in the section for American citizens I was closely questioned by this same clerk who is taking this affidavit. She explained me all the consequences of a false statement, she repeated me several times to tell the truth inducing me in all ways to tell the truth, by even telling me that the certificate showed sign of alteration, but because of what the man told me, I would have never admitted, at least that day, to have voted, even if I was requested to make a sworn statement. On the same day I was questioned also by a Consul, but I maintained in my denial.

Now I admit that I voted in the Administrative elections of March 24, 1946 and on June 2, 1946. To the question whether I knew the regulations, I must answer that before talking with that man on September 27, 1946, I was completely ignorant of the fact that as an American citizen I was not supposed to vote. If I would have known before coming to this office, I do not

know now what I would have done with the certificate. The fact that I was happily coming here with the certificate showing that I voted shows in a clear way that until that time, I did not know anything of the repercussion which would have had my action in voting.

Now that this clerk is reading me the contents of paragraph number 9 in the copy of the summons I am obliged to make clear that I only intended to say that I did not vote because I liked to mix in political affairs of Italy, but just because that by rumor around and propaganda I thought it was compulsory to vote. I remember that the propaganda insisted in the obligatoriness of voting for the Political elections of June 2, 1946, but not for the Administrative Elections occurred on March 24, 1946. I voted for the liberal party and by so doing I thought also to do something on behalf of the United States because people in town said that the liberal party was like the American Party. No one forced me to vote and I have never requested at the City Hall to anyone whether I should vote as an American citizen. I did not even ask to this Consulate whether I was supposed to vote. The fact is, I repeat that I had not the slightest idea of regulations. I am a man of a very modest education and I only attended three years of grammar school when a child.

I can add that if I had known regulations I would have been in no way and by no one induced to vote. In fact as shown by the unused certificate which I am exhibiting herewith, I did not vote in the elections of April 18, 1948 in spite of all the propaganda made around. I recognize that there is some exaggeration in the contents of paragraph 9 and I presume that this came out part from what I wrote to my nephew, Leonardo Pinto, and part from his desire to help me in returning to the United States.

This affidavit has been read to me in Italian word by word, by this clerk, before another clerk of this office and by the Consul. I can never say that I did not understand what has been written for me.

Because this clerk is asking me once more whether I

ever met before the man whom I spoke around this Consulate, I say that I never met him before and I do not know his name or his whereabouts. I am positive in saying that things went as I stated in this affidavit because even if I made false statement on September 27, 1946, now really I am telling the truth.

(S.) SISTO BISSEGLIO.

Sworn and subscribed to before me this 17th day of January, 1949.

ROBERT S. HOARD,

[SEAL.] *Vice Consul of the United States of America.*

(4446)

Judge George V. Washington

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,959

SISTO BISCEGLIA, APPELLANT

v.

DEAN ACHESON, SECRETARY OF STATE, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

CHARLES M. IRELAN,
United States Attorney.

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*United States Court of Appeals
For the
District of Columbia Circuit*
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QUESTIONS PRESENTED

1. Does appellant's intent at the time he voted in the March, 1946, Italian election affect his expatriation under Section 801 (e), Title 8, U.S.C.A.?

2. Was the March, 1946, Italian election a political election in a foreign state within the meaning of Section 801 (e), *supra*?

3. Did appellant vote in the June, 1946, Italian elections under duress?

4. Did appellant expatriate himself under the provisions of the first paragraph of Section 2 of the Expatriation Act of March 2, 1907, when he reacquired Italian nationality in conformity with the applicable Italian law?

5. Did appellant lose his American nationality through his continued residence, and course of conduct in Italy, subsequent to July, 1938?

6. Did the trial judge commit reversible error by not admitting into evidence the full text of a House of Representatives Subcommittee Report on conditions in Italy at the time of the 1946 elections?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,959

SISTO BISCEGLIA, APPELLANT

v.

DEAN ACHESON, SECRETARY OF STATE, APPELLEE

***APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA***

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

Appellant, born in Italy in 1894, and naturalized as a citizen of the United States in 1920, voted in the Italian elections of March, 1946, and also in the elections of June, 1946, and by so doing committed an act of expatriation under the provisions of Section 801 (e), Title 8, U.S.C. (Nationality Act of 1940). This section states:

§ 801. General Means of Losing United States Nationality.

A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

• • •

(e) voting in a political election in a foreign state or participation in an election or plebiscite to determine the sovereignty over foreign territory.

At the trial appellant admitted he had voted in the Italian elections of March and June, 1946, but alleged that he didn't know he was doing anything wrong when he voted. Insofar as his voting in the June, 1946, elections is concerned, appellant made some vague and general statements about voting in that election because he had heard "rumors and propaganda" that if he did not vote he might lose his "civil rights," be "starved," and go to "jail." (Jt. App., pp. 49, 50, 59, 76, 77). He, however, admitted that no person ever told him these things personally, nor did anyone ever say that these things would happen to him individually. (Jt. App. pp. 50, 59.)

Appellant's statements concerning duress at the trial were in direct conflict with his previous sworn statements in an affidavit supporting his application for a Certificate of Identity made at Naples, Italy, in December, 1949. In the affidavit appellant expressly says that he voted only because of rumors and propaganda that voting was compulsory, and further, that no one forced him to vote. (Jt. App. p. 77).

Appellant, in addition, expatriated himself under the provisions of Section 2, Expatriation Act of March 2, 1907 (34 Stat. 1228, 8 U.S.C. 17), when, in 1938, he reacquired Italian nationality in conformity with the laws of that country under Article IX (3) of the Italian Nationality Law of 1912. Under the Italian law appellant lost his Italian nationality when he became a naturalized citizen of the United States, but again became an Italian national when, in 1938, he completed two years residence in Italy, the country of his birth, after having returned there from the United States in July, 1936. The Act of March 2, 1907, expatriates any American citizen when he has been naturalized in any foreign state *in conformity with its laws*.

At the trial it developed from the testimony that while appellant was naturalized at New York City in 1920, he went back to Italy three times between June, 1929, and July, 1936, finally returning to the United States in 1949. Excluding the war years, appellant lived in Italy 96 out of the 150 months between June, 1929, and December, 1941. (Jt. App. p. 39). He owned a farm and a house there and worked

it as his livelihood. (Jt. App. p. 56.) His wife ran a grocery store in Italy and he said that in this venture he sometimes did "pretty well." (Jt. App. p. 57.) He had two Italian identity cards which gave his nationality as Italian (Jt. App. p. 58). He was married in Italy and all but one of his children were born in that country. (Jt. App. p. 40). Appellant's stated reason for going to Italy was to take hot baths for his rheumatism in the knees. (Jt. App. p. 57). The trial judge in his memorandum opinion said this excuse was "a mere subterfuge." This pattern of conduct, developed by appellant's own testimony, is sufficient to prevent appellant from overcoming the presumption of expatriation which attached to him under the provisions of Section 2, Expatriation Act of March 2, 1907, *supra*.

STATUTES CONSTRUED

Sec. 2, Expatriation Act of March 2, 1907 (34 Stat. 1228, 8 U.S.C. 17):

That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state.

When any naturalized citizen shall have resided for two years in the foreign state from which he came, or for five years in any other foreign state it shall be presumed that he has ceased to be an American citizen, and the place of his general abode shall be deemed his place of residence during said years: *Provided, however*, That such presumption may be overcome on the presentation of satisfactory evidence to a diplomatic or consular officer of the United States, under such rules and regulations as the Department of State may prescribe; *And provided also*, That no American citizen shall be allowed to expatriate himself when this country is at war.

Sec. 401 (e) of the Nationality Act of 1940 (54 Stat. 1169; 8 U.S.C. 801 (e)):

§ 801. General Means of Losing United States Nationality.

A person who is a national of the United States,

whether by birth or naturalization, shall lose his nationality by:

(e) Voting in a political election in a foreign state or participating in a plebiscite to determine sovereignty over foreign territory; * * *

Article IX (3), Italian Nationality Law of 1912:

Article 9. He who has lost nationality in pursuance of Article 7, and 8, may reacquire it * * *

(3) after two years residence in the kingdom, if the loss of citizenship has been due to the acquisition of foreign citizenship.

SUMMARY OF ARGUMENT

Appellant expatriated himself when he voted in the March, 1946, Italian elections because a friend who was a candidate for Mayor asked him to do so. (Jt. App. p. 49) He did not vote in this election under duress, and this election was a political election in a foreign state within the meaning of the expatriation statute of the Nationality Act of 1940. Appellant also voted in the June, 1946, elections, and he voted after giving careful deliberation to his actions. The "rumors and propaganda," about loss of civil rights which he claims he heard, even if true, do not constitute duress sufficient to excuse his voting. The evidence, however, shows that appellant is not a credible witness and his statements about duress should not be believed.

Appellant expatriated himself under the provisions of the first paragraph of section 2, Expatriation Act of 1907 (34 Stat. 1228; 8 U.S.C. 17) when, in 1938, after two years residence in Italy he became an Italian national under the provisions of the Italian Nationality Law of 1912. In addition, under the second paragraph of section 2, Expatriation Act of 1907, *surpa*, appellant, a naturalized American citizen, by going back to the country of his birth and residing there for two years, created a presumption against his being a national of the United States. His course of conduct since July, 1938, does not overcome that presumption.

It was not reversible error for the trial judge to refuse to admit the full text of a House of Representatives Subcommittee Report on conditions in Italy at the time of the 1946 elections.

ARGUMENT

I

Appellant Has Expatriated Himself by Voting in Italian Elections and Such Voting Was Not Performed under Duress

A. Appellant Voted in the March, 1946, Elections as a Favor to a Friend Who Was a Candidate

Appellant blithely said that he voted in the March, 1946, elections because he met a construction engineer friend of his who was running for Mayor of the town or city where appellant was living, and that this political friend said, "Sisto, give me the vote. Don't fool me. Give to me—I want the vote." Appellant obliged, voted for his friend, and defends by saying that he didn't know he was doing anything wrong. (Jt. App. pp. 48, 49) These facts alone are sufficient to cause appellant's expatriation under Section 801 (e), Title 8, U.S.C. If appellant did not vote under duress, the objective act of voting results in expatriation and appellant's intent or lack of it, at the time that he voted is immaterial. The Supreme Court determined this issue in *Savorgnan v. United States*, 338 U.S. 492, 70 S. Ct. 292, 94 L. Ed. 287 (1950) when, in discussing expatriation under the Nationality Act of 1940, it said:

• • • the acts upon which the statutes expressly condition the consent of our government to the expatriation of its citizens are stated objectively. *There is no suggestion in the statutory language that the effect of the specified overt acts, when voluntarily done, is conditional upon the undisclosed intent of the person doing them.* (Emphasis supplied.)

B. The March, 1946, Italian Election was a Political Election

Appellee in his brief contends that the March, 1946, election was not a political election within the meaning of Sec-

tion 801 (e), Title 8, U.S.C. Appellee in substance claims that the statute covers only voting in elections to elect national officers, or members of national legislative bodies. The appellant in March, 1946, voted in a local election to elect a friend as Mayor. (Jt. App. p. 49)

The definition of the term "political election in a foreign state" has received consideration from the courts, but while the courts have asked themselves whether this or that election was a "political election in a foreign state," their concern has been primarily with whether the election concerned was held in a "foreign state," and not whether or not the election was "political." Thus, in *Acheson v. Mariko Kuniyuki*, 189 F. 2d 741, 9th Cir., (June 14, 1951), the Court of Appeals there resolved a conflict which had existed among eleven previously rendered District Court cases in the Ninth Circuit over whether the elections held in Japan under the allied occupation were held in a "foreign state." The Ninth Circuit, relying on the reasoning expressed in *Kuwahara v. Acheson*, D.C.S.D. Cal., 96 F. Supp. 38 (March 5, 1951), and *Uyeno v. Acheson*, D.C.W.D. Wash., 96 F. Supp. 510 (March 23, 1951), held that Japan was still a "foreign state" and thus that the elections were within the meaning of Section 801 (e), *supra*. A reading of the decisions shows that there never was any question over the political nature of the elections. The court in *Uyeno v. Acheson*, *supra*, in reasoning that the elections were political elections, said,

We are to determine the meaning and effect of the participation of the plaintiff in the Japanese election of 1947 at which the voters of occupied Japan voted for members of the House of Representatives, members of the prefectural and village heads, in the light of the provisions of subdivision (e) of Section 801 of Title 8, U.S.C.A. * * * They were political in character because they were held, for the purpose or in connection with the administration of public affairs. They concerned all political units, wards, villages, towns, and prefectures. * * * (Emphasis supplied.)

In discussing the same question, the court in *Kuwahara v. Acheson*, *supra*, reviewed the legislative history of Section 801 (e), *supra*, and said,

Thus a political election may be defined as the act of choosing by vote a person to fill an office, which office pertains to the conduct of government.

* * * *

It should be noted that *no special significance was attached to the words "political elections."* It seems clear that they were intended to be used in their ordinary sense. The act of voting in a political election in a foreign state meant to drafters of the Act the taking of an active part in the political affairs of a foreign state by voting for persons to fill public office. (Emphasis supplied.)

In *Brehm v. Acheson*, D.C.S.D. Tex., 90 F. Supp. 662 (1950), the plaintiff voted in "the Gemeinde elections (community election—for officials of very small communities)" and the court in its opinion did not question the political nature of this election because it was local in character. The court, however, did find that occupied Germany in January, 1946, was not a "foreign state."

The elections in *Tomasicchio v. Acheson*, D.C.D.C., 98 F. Supp. 166 (June 18, 1951), were the same March, 1946, Italian elections which are concerned in the case now at bar. The court there found that the plaintiff voted under duress and therefore excused the plaintiff's act of expatriation. But if the court decided the case on the question of duress, it is forcibly clear that the court considered these March, 1946, elections to be "political elections in a foreign state" under Section 801 (e), *supra*. A court cannot excuse an act of expatriation on the ground that it was performed under duress unless, *a fortiori*, it has already decided that an act of expatriation has been done by the plaintiff.

Appellee's argument puts him in the paradoxical position of arguing that an election for a mayor is not a political election. What kind of an election is it? It would come as a shock to most mayors everywhere to learn they had not been active in politics and had not been elected in a political election. On the authorities quoted above, it is submitted that the March, 1946, Italian election was a political election within the meaning of Section 801 (e), *supra*, that the

appellant voted in the election at the simple request of a friend who was a candidate for the office of Mayor, that there was no duress present to excuse this act of expatriation, and that appellant thereby expatriated himself under the provisions of Section 801 (e), *supra*.

C. The Circumstances Under Which Appellant Voted in the June, 1946, Italian Elections Do Not Constitute Duress Sufficient to Excuse his So Voting

Appellant voted the second time, in the June, 1946, elections, after some apparently serious thought. He testified that before he voted he had heard rumors that he might lose his civil rights if he voted, (Jt. App. p. 50) but that no one ever told him personally that he would go to jail if he voted. (Jt. App. p. 59) There is, in fact, in the testimony of the appellant at the trial, one answer which indicates that appellant had heard that if *he did vote* he could not go back to America. (Jt. App. p. 49.) In any event, it is clear that the appellant thought all one night about whether he should vote in the June elections, he stayed away from the polls during the first day of the voting, and he went and voted on the second day. (Jt. App. pp. 49, 50.) His decision to vote was as reasoned and determined a decision as appellant was capable of making. The fact that it was made under some pressure is not unusual, and is certainly not legal duress. Most votes by most people in most hotly contested elections are made under some pressure. Emotional strain and mental pressure are common to politics and elections in general. If the circumstances under which appellant cast his vote in the June, 1946, election amount to legal duress, the remedy should be made available to excuse every domestic legislator who casts a vote on any contested issue, and then lives to see the day when his vote on that issue is proven to have been a decisive personal error.

The very fact that appellant was subjected to some internal strain indicates that he considered himself an Italian at the time. An American in Italy who had no doubts about his nationality could reasonably become curious or partisan about the *result* of such an election, but such an American

would have no questions whatsoever about his own qualifications to participate in the election. He would know he was no more than an observer. The duress which the appellant contends he was subjected to would leave such an American unaffected.

It is the strong contention of the appellee that under the law, as illustrated by the cases cited below, the facts in this case do not come close to creating circumstances of duress sufficient to excuse appellant from expatriation under Section 801 (e), Title 8, U.S.C.

The plaintiff in *Cantoni v. Acheson*, D.C. N.D. Cal., 88 F. Supp. 576 (1950) also voted in Italian elections and carried an identity card like appellant. In addition, he served in the Italian Army. In denying him judgment for a declaratory judgment of citizenship, the court stated:

There is no credible evidence in this case that the acts of renunciation were not voluntarily and freely done. There was testimony that plaintiff performed military service because he thought he had to and *that he voted because he feared some governmental sanctions would otherwise be imposed. But that does not amount to an involuntary or forced act in the sense that he was compelled to perform such acts in spite of an "intensity of . . . purpose to retain his American nationality."* *Dos Reis ex rel. Camara v. Nicolls, supra*, note 3 (161 Fed. 862). *Any claimed reluctance in the performance of these acts was no more than may have conditioned the minds of many Italians at the time . . .* (Emphasis supplied.)

The language of the court in *Cantoni v. Acheson, supra*, is directly applicable to the case before the court. Appellant "heard rumors", talk in the market place, that things might happen to him if he voted. If he gave these rumors any credence at all, his state of mind was not unlike that, as the court above says, of many other Italians at the time. He was at the most, "reluctant" to vote. To try, now, to raise "rumors" and "propaganda" to the stature of personal duress is directly contrary to law. Appellant suffered no loss of freedom of will, nor was he in fear of bodily harm, two traditional elements of duress.

In cases decided by the United States District Court for the District of Columbia wherein the issue was whether voting in a foreign election caused expatriation, the District Court has in its reported decisions, most often given judgment against the plaintiffs. *Dubonnet v. United States*, D.C. D.C., 80 F. Supp. 905 (1948); *Kazdy-Reich*, D.C. D.C., 88 F. Supp. 787 (1950); see also *Rosselli v. United States*, D.C. D.C., C.A. 269-49 (June 5, 1951). But see, contra, *Tomasicchio v. Acheson*, D.C. D.C., 98 F. Supp., *Brancaleone v. Acheson*, D.C. D.C., C.A. 4445-48 (March 2, 1951).

In *Kazdy-Reich v. Marshall*, D.C. D.C., 88 F. Supp. 787 (1950), the plaintiff, a woman, was born in the United States. She married in America in 1925 and lived in this country until 1935. At that time she went to Hungary and was caught there by the war. Her husband was a well-known anti-Communist in Hungary in 1945 at a time when the United States had a few hundred troops in that country and Soviet Russia had over a million there. Her name appeared on the voting list as being eligible to vote, and there was evidence that to have one's name transferred to the non-voters list was dangerous because only Nazis and criminals appeared on the ineligible list. Plaintiff voted, and then sought excuse on the grounds of duress through an action for declaratory judgment. The court dismissed her complaint stating:

The court reaches the conclusion that the plaintiff voted voluntarily in the Hungarian national election. In the light of her testimony, the fact that she went to the polls and voted against the Communists indicates a free will rather than the contrary. Plaintiff's action in voting was *not due to any coercion exercised by the Hungarian government or by the Communists*. Indeed there is no testimony that any attempt was made to have plaintiff vote except that all communists told one another to vote and that there was publicity urging people to vote. Even if plaintiff intended, as she insists, to remain a citizen of the United States, nevertheless, by virtue of the nationality act her expatriation took effect when she voted in the Hungarian elections. (Emphasis supplied.)

In *Dubonnet v. United States*, D.C. D.C. 80 F. Supp. 905 (1948), another case decided in this jurisdiction, the court held that fear of the German Gestapo was not sufficient duress to excuse an American-born girl from expatriation based upon her having taken out French nationality. The court said:

I am not satisfied that her action in obtaining French nationality was due solely to *fear of her life or her freedom*. Her action in obtaining French nationality was not due to any duress executed by the French government, and the mere fact that she may have feared action by the German Gestapo is not, in my opinion, ground for the relief she seeks in this court. (Emphasis supplied).

The court in *Dubonnet v. United States*, *supra*, impliedly recognized the necessity of establishing fear of life or liberty induced by some government official to create the duress needed to excuse an act of expatriation. When the court was unable to find any such elements, it dismissed the complaint. " * * * The forsaking of American citizenship even in a difficult situation, as a matter of expediency, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress. *Doreau v. Marshall*, C.A. 3d Cir., 170 F. 2d 721 (1948).

On the other hand, when courts find duress to actually exist in expatriation cases, such duress operates to excuse the act of expatriation and a declaratory judgment of citizenship is entered for the plaintiff. *Savorgnan v. United States*, *supra*, note 18, p. 502, citing *Dos Reis v. Nicolls*, C.A. 1st Cir., 161 F. 2d 860 (1947); *Schioler v. United States*, D.C.N.D. Ill., 75 F. Supp. 353 (1948); and in re *Gogal*, D.C.W.D. Pa., 75 F. Supp. 268 (1947) as examples of cases where the duress was sufficient to excuse an act of expatriation under Section 801, Title 8, U.S.C. The facts in appellant's case, however, do not approximate circumstances which have been held, in other cases, to amount to duress and thereby excuse an act of expatriation. In each of the cases where duress has been found to exist there was

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an exercise of force against the plaintiff, or there was an express action against the plaintiff by an official of the foreign government concerned.

It, therefore, becomes pertinent to review these decisions where courts have found duress to exist.

The facts in *In re Gogal, supra*, are made clear in the opinion of the court which states:

During the first part of October, 1922, he received an additional notice that he was to be formally inducted into the armed forces of Czechoslovakia, and again no attention was given to said notice; that a short time thereafter he was forceably from his home by the police authorities in the country of Czechoslovakia, given a uniform, and compelled to enter military service. I, therefore, believe that the petitioner was inducted into the Czechoslovakian Army under duress, force, fear and intimidation.

In *Schioler v. United States, supra*, the facts were that an American wife of an engineer working in Denmark during World War II was advised by Danish officials to become a citizen of Denmark in order to protect herself and two small children from being taken by the Germans. In holding that this act did not cause the plaintiff to lose her United States citizenship, the court said:

However, in considering this case, the court also recognized that self-preservation is nature's first law, and that it is quite natural for mothers and fathers to seek in every way to preserve the lives of their children when their safety is threatened. Where an American citizen finds himself and his family, as Paul Schioler did, in a theatre of war, their safety threatened, facing the gravest of dangers, even possible death or internment, and in this extremity, *on the advice of officials of the foreign state where he happens to be*, makes application for foreign citizenship in an effort to preserve the lives and safety of his family, his wife joining in the application, I am of the opinion that under such circumstances the joinder of the wife is not such a voluntary renunciation or abandonment of her nationality as to forfeit her American-born citizenship. (Emphasis supplied.)

In *Dos Reis ex rel. Camara v. Nicolls, supra*, the plaintiff, born in America, was taken to the Azores by his parents when he was twelve years old. What happened after that is briefly set out in the court's opinion:

On or about October 27, 1943, at which time Camara was twenty-one years of age, he received a draft notice for service in the Portuguese army. He made inquiries at the American consulate and was told by someone there that if he wanted to join the American army, he could return to America. * * * On reporting to the Portuguese military authorities, Camara told them that he was an American citizen and that he did not wish to serve in the Portuguese army. *Having been informed that, under the law of Portugal, he was a Portuguese citizen and that the only alternative to service in the army was a concentration camp, Camara submitted to induction into the Portuguese army, in which he served until discharged about October 26, 1945.* He did not swear allegiance to Portugal at any time.

Upon his release from the Portuguese army Camara obtained a job as sales clerk in the post exchange at an American Army Air Transport Command base at Santa Maria, Azores. He there secreted himself in the baggage compartment of an Air Transport Command plane on August 8, 1946, and arrived at Westover Field, Chicopee, Massachusetts, the next day. * * *

The Court of Appeals for the First Circuit then ordered the plaintiff Camara released from custody where he had been held since entering the country as a stowaway, and declared him a citizen of the United States.

Thus we can see that in each case where duress was found to exist there was an element of force exerted against the plaintiff from an official source of the foreign country where plaintiff was residing at the time the act of expatriation was committed. In *In re Gogal, supra*, the force was the Czech police; in *Schioler v. United States*, it was officials of the Danish government; and in *Dos Reis ex rel. Camara v. Nicolls, supra*, it was the Portuguese army. Can it seriously be contended that the "rumors" heard by appellant equal in effect the duress exerted by the various agencies in the cases just cited above?

D. Appellant's statements about fear of loss of food cannot be believed

Appellant is inconsistent with himself several times over the question of whether he was subjected to duress. He alleges in paragraph 9 of the complaint that he was compelled to vote "by reason of the undue influence and pressure exerted upon him by officials of the Italian government" (Jt. App. p. 27), but he admits that this statement is exaggerated in his affidavit executed at Naples in 1949 in support of his application for a Certificate of Identity. (J.A. p. 77) In the affidavit he says,

. . . I am obliged to make it clear that I did not vote because I liked to mix in political affairs in Italy, but just because that *by rumor around and propaganda I thought it was compulsory to vote.* (Emphasis supplied.)

It is important to note that appellant nowhere in his affidavit states that he was threatened with loss of ration coupons, loss of food, imprisonment, or even loss of "civil rights." His statements at the trial concerning these later-discovered reasons for his voting were not direct and were forthcoming only under the most patient, and leading, questioning by appellant's attorney. (Jt. App. p. 50). On cross-examination, appellant said that he owned an orchard, that his wife owned a grocery store, that sometimes he made himself money and got along "pretty good," that nobody forced him "very bad" to vote, and that nobody ever told him personally that he would go to jail if he did not vote. (Jt. App. pp. 56-59). Out of all this testimony, the only element of duress which could possibly be sifted, under the decisions rendered so far, would be appellant's statement that he heard from some people that a clerk had said that persons who did not vote would lose food [It is submitted that this sentence is a fair paraphrase of appellant's second answer on page 50 of the Joint Appendix]. One court of appeals has held that loss of ration coupons or food amounts to duress. *Acheson v. Mariko Kuniyuki*, (C.A. 9th Cir.) 189

F. 2d 741 (June 14, 1951).¹ Appellant's statements about such possible elements of duress must, however, be subjected to the test of credibility.

When the test of credibility is applied to appellant's statements about duress, it is necessary to consider all of the other statements appellant made, because if appellant gave false testimony about one point it is reasonable to assume that he may also have given false testimony about other points. As has been shown there is a conflict between appellant's motives for voting in the elections as set forth in his affidavit made at Naples in December, 1947 and as stated in his testimony at the trial. (Jt. App. pp. 50, 77) Secondly, the trial judge as the trier of the fact found that appellant testified falsely as to his reason for remaining in Italy. Judge Bailey, in his memorandum, said,

I think the reason that plaintiff gives for his remaining in Italy, that he was seeking the warm baths of that country to relieve his rheumatism, is a mere subterfuge. (Jt. App. p. 32)

It is not conceded that appellant's statements, even if true, could amount to sufficient duress to excuse his act of expatriation. *Savorgnan v. United States, supra*; *Dos Reis v. Nicolls, supra*; *Schioler v. United States, supra* and *In re Gogal, supra*. But when appellant's statements are tested for credibility, it is submitted that the decision of the court in *Minoru Hamomoto v. Acheson*, D.C. S.D. Cal., 98 F. Supp. 904, (May 10, 1951) is pertinent and controlling.

In that case the plaintiff was a Japanese who had expatriated himself by serving in the Japanese army. The court said,

In this type of case there is but one witness, the plaintiff. The defendant has a record of the plaintiff's service in the Japanese Army, but there are no witnesses

¹ It is submitted that this decision adopts a subjective view towards acts of expatriation which exceeds the objective standards for duress laid down in *Savorgnan v. United States*, 338 U.S. 491, at pages 499 and 500, and particularly in notes 17 and 18. The same criticism is made of the decision in *Tomasicchio v. Acheson*, D.C. D.C., 98 F. Supp. 166 (June 18, 1951).

available to refute his statements with respect to the voluntary character of his acts.

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The court is not forced to accept testimony even when unimpeached or not directly contradicted, against presumptions or reasonable inferences from other facts in evidence . . . [cases cited] . . . Such presumptions and inferences create a conflict for the determination of the trier of facts. In passing on the credibility of witnesses and the weight to be given their testimony, the trier of fact may consider their interest in the result of the case, their motives, the manner in which they testify, and the contradictions in the evidence. Applying this test in the instant case leads the court to the conclusion that the plaintiff failed to overcome the presumption that he was voluntarily expatriated . . .

On the point of duress at the June, 1946 elections, appellee says that the "rumors and propaganda" to which appellant contends he was subjected do not constitute duress, that his statements about loss of food and imprisonment for not voting are not to be believed and were not believed by the trial judge, that appellant's act of expatriation is thus not excused, and that appellant is therefore expatriated under the provisions of Section 801 (e), Title 8, U.S.C.

II

Appellant Has Expatriated Himself under the Provisions of the Expatriation Act of March 2, 1907

A. Under the law of Italy he became an Italian National in 1938

The Expatriation Act of March 2, 1907 (34 Stat. 1229, 8 U.S.C., § 17) says in its first paragraph that any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state *in conformity with its laws*, or when he has taken an oath of allegiance to any foreign state. The second paragraph of the Act of 1907, *supra*, particularly concerns *naturalized*

American citizens and that paragraph operates to raise a presumption against the continuing United States citizenship of any such naturalized citizen who returns to his native land for more than two years, or who remains in any other foreign country for more than five years. Some decisions of the courts have, as appellant correctly argues in his brief, limited the application of the second paragraph of the Act of 1907, *supra*, to the extent that the presumption against loss of citizenship in that paragraph has been held to never become final or irrefutable, regardless of the length and cause of foreign residence, and the time limits of two and five years set forth in the paragraph have been held to be merely definitive of the time beyond which the United States would not extend protection to its naturalized citizens abroad, rather than as the time limit after which such naturalized citizens would be presumed to have been expatriated. *Nurge v. Miller*, D.C. N.Y., 286 F. 982 (1923); *Miller v. Singen*, C.C.A. 8th Cir., 289 F. 388 (1923); *United States v. Eliason*, D.C. Wash., 11 F. 2d 785 (1926). As the Court said in *Camardo v. Tillinghast*, C.C.A. 1st Cir., 29 F. 2d 527 (1928),

It is highly doubtful whether the provisions of law contained in the second paragraph of this section have any other or further application than to fix the length of time beyond which this government will not extend protection to its naturalized citizens residing abroad, as the preamble of the act declares.

The United States Court of Appeals for the District of Columbia Circuit has, through the opinions of its predecessors, taken a more stringent view of the meaning of the second paragraph of the Act of 1907, *supra*. Thus, the Court in *Cummings v. Isenberg*, C.A.D.C., 89 F. 2d 489 (1937), said,

We have no occasion to consider whether the act of 1907 is, as has sometimes been said, a statute for the convenience of the State Department in cases of persons residing abroad and seeking protection from this government. Whatever it may or may not be in that respect, it certainly creates a presumption of

expatriation in the case of every naturalized citizen absenting himself from the United States for the period of at least five years. * * *

See also: *Thorsch v. Miller*, 55 App. D.C. 295, 5 F. 2d 118, 120 (1925), appeal dismissed 274 U.S. 763, 47 S. Ct. 577, 71 L. Ed. 1318.

While there has been much discussion in the courts over the standards to be applied to the presumption-raising second paragraph of the Act of 1907, the test to be applied to the first paragraph of the Act has always been clearer, and more objective. If an American citizen became naturalized in a foreign state in conformity with the laws of that country, the courts would declare his expatriation. *Reynolds v. Haskins*, C.C.A. 8th Cir., 8 F. 2d 473 (1925). If an American citizen took an oath of allegiance to a foreign state, the courts would also, under the provisions of the first paragraph of the Act of 1907 declare his expatriation. *United States v. Karnuth*, D.C.W.N.Y., 14 F. Supp. 770 (1936); *United States ex rel. Rojak v. Marshall*, D.C.W.D.Pa., 34 F. 2d 219 (1929); *Ex parte Griffin*, D.C.N.Y., 237 F. 445 (1916). Further difference between the two paragraphs of the Act is evidenced by the fact that while the courts have limited the possibilities of expatriation under the second paragraph, they have, on occasion, inferred an act of expatriation when none had been expressly proved, under the first paragraph. Thus in *United States ex rel. Rojak v. Marshall*, *supra*, the court presumed that the relator swore an oath of allegiance to Czecho-slovakia in 1921 from the facts that, (a) he served in the Czech army and, (b) the law of Czecho-slovakia required all men serving in the army to swear allegiance to that government. In addition, the fact that the two paragraphs are separate and not subject to the same standards of limitation or interpretation is made distinct when it is realized that the two paragraphs do not even apply to the same classes of citizens; the first paragraph applies to all citizens, the second paragraph applies only to naturalized citizens. Thus, if any citizen of the United States becomes a national of any foreign state in

conformity with its laws that citizen stands expatriated regardless of whatever limitations may have, through court decision, been put on the language of the second paragraph of the Act of 1907.

The appellee, however, will concede that an act of expatriation under the first paragraph of the Act of 1907 must be a voluntary one. *Savorgnan v. United States*, *supra*. Appellee does not concede, however, that appellant's reacquisition of Italian nationality under Article IX (3) of the Italian Nationality Law of 1912 was not voluntary. To reacquire Italian nationality under the provisions of and "in conformity with" the Italian law, appellant had to voluntarily reside in Italy for two years after he returned there in July, 1936. This appellant did. Each country may set up its own procedures for acquiring its nationality; under the Italian law only two years residence in that country is and was required. The Act of 1907 does not lay down requirements for the naturalization procedures of other sovereign nations; it does not set standards of rigidity or laxity for such other countries' naturalization procedures. It, by its terms, merely accepts other countries' laws as it finds them, and holds that any citizen of this country who becomes naturalized in conformity with the laws of another country is thereby expatriated from the United States.

Such naturalization in another country must not be involuntary. Had appellant been held in Italy for two years against his will he probably would not be expatriated under the first paragraph of the Act of 1907. But appellant stayed in Italy voluntarily and appellant was not uninformed as to what he had to do in order to return to the United States. By his own testimony he says that he was authorized to return to the United States in 1938, the year he reacquired Italian nationality, but that he chose to remain there in the hopes that a law would be changed which would enable him to keep a farm that he owned, and, in fact, still owns, in Italy (Jt. App. pp. 55, 56).

Appellant ratified his reacquisition of Italian nationality each day he remained in Italy and lived the life of an ordinary Italian citizen after the date in 1938 when he

reacquired that nationality under the provisions of Article IX (3) of the Italian Nationality Act of 1912. He emphasized his ratification late in 1938 when he decided not to go back to the United States after he had been authorized to do so by the State Department. Appellant made his choice of countries at that time, his choice was made for "crass material reasons," he has been legally expatriated under the complimentary provisions of the Italian Nationality Act of 1912 and the United States Expatriation Act of March 2, 1907, and he should not now, after World War II, be permitted to again change his mind and avoid the law for, again "crass material reasons" implicit in the change in economic and political conditions and positions which have occurred between Italy and the United States since 1938, the time when appellant made his original decision to stay in Italy. *Doreau v. Marshall, supra.*

B. Appellant's Course of Conduct in Italy Since 1938 Does Not Enable Him to Rebut the Presumption of Expatriation.

Though some courts have, as was stated above, limited the effect of the second paragraph of Section 2 of the Expatriation Act of March 2, 1907, to a method of denying United States protection to naturalized citizens who stayed abroad more than two or five years, the United States Court of Appeals for the District of Columbia Circuit has not so ruled on the statute. *Cummings v. Isenberg*, C.A.D.C., 67 App. D.C. 17, 89 F. 2d 489 (1937), cert. denied 301 U.S. 682, rehearing-denied 301 U.S. 713. In that case this Court took cognizance of the decisions of other courts which limited the effect of the statute to a denial of protection rather than a basis for expatriation; but the Court said specifically that it had "no occasion" to consider that interpretation. This Court went on to say, however, that the statute "certainly creates a presumption of expatriation in the case of every naturalized citizen absenting himself from the United States for the period of at least five years . . . unless and until that presumption is overcome . . ." It is, therefore, clear that this Court has not accepted any limited interpretation of the second paragraph of the Act of 1907.

In deciding cases under the Trading with the Enemy Act this Court has always held that the plaintiff must establish his United States citizenship as a condition precedent to a suit for recovery of property against the Alien Property Custodian. In determining this condition precedent the court has placed much stress upon the history of the particular plaintiff's conduct. If, by his conduct, the plaintiff overcame the presumption of expatriation under the Act of 1907, the court would then decide the particular merits of his claim against the Custodian. Thus, in *Cummings v. Isenberg, supra*, the court recited the facts of the appellee's conduct, and held he had "wholly failed to discharge the burden of proof of citizenship which our law imposes." The appellee there was a person born in Germany who subsequently lived in Hawaii as a Hawaiian citizen before moving back to Germany where he lived and worked during and after World War I. In *Thorsch v. Miller*, 55 App. D.C. 295, 5 F. 2d 118 (1925), this Court applied the Act of 1907 to hold that Mr. Thorsch had not overcome the presumption of expatriation, and therefore could not properly sue the Custodian for property in the latter's possession. The court based its decision on the details of Mr. Thorsch's conduct in being naturalized in the United States, and then later removing himself, his family, and possessions to Austria where he engaged in business on a large scale. In contrast to the cases just cited, this Court in *McGrath v. Zander*, 85 U.S. App. D.C. 334, 177 F. 2d 649 (1949), found that an American woman who married a German did so with the intention to retain her domicile in the United States, and that the "good faith of this understanding (was) proven by the persistency with which both (husband and wife) pursued it to a final consummation." The court declared the woman to still be a citizen of the United States and permitted her to recover against the Custodian. Once again, it was the facts of the woman's conduct which controlled the court's decision on whether she was a citizen and entitled to sue.

If such a test of the facts is put to the appellant in the case at bar, appellant will not overcome the presumption of expatriation. Everything he did up to, and through,

World War II is evidentiary of an intent to be an Italian national and not a citizen of the United States. He lived in Italy 96 months out of 150 months between July, 1936, and the outbreak of war in December, 1941. (Jt. App. p. 39.) He stayed in Italy during that country's war with Ethiopia and also during the first two years of World War II, a time when Italy was at war and the United States still at peace. (Jt. App. p. 39.) He decided not to leave Italy in 1938 when he apparently had the chance to leave. (Jt. App. p. 41.) At that time he did not choose to leave because he wished to retain the property he had bought in Italy. (Jt. App. p. 43.) During the war he was asked to move by the Italian officials because his home was near military installations. (Jt. App. p. 46.) By itself this would appear to be in appellant's favor as evidence that he continued to be regarded in Italy as a citizen of the United States. Appellant, however, when threatened with this move, sent his lawyer to the officials and got the answer that he was "all right" and could stay where he was. (Jt. App. p. 46.) Appellant married in Italy and all of his children except one were born there. (Jt. App. p. 40) He and his wife ran a grocery store and owned an orchard in Italy. There is no evidence that this strictly native enterprise was not appellant's sole means of livelihood. (Jt. App. p. 57) Appellant had two identity cards, both describing his nationality as "Italian." (Jt. App. pp. 57, 58). Appellant's original reason for going to Italy was because he had rheumatism and because he knew the place and people over there. He said he'd "rather go over there." (Jt. App. p. 57). As soon as elections were held after the war, appellant voted in the elections. (Jt. App. pp. 48, 49) He voted once because a friend of his who was a candidate asked for his vote (Jt. App. p. 49).

Individually the facts recited above are insignificant and petty. Together they make a pattern of an ordinary Italian citizen's life in Italy. Together they show that the appellant was more an Italian national than he was anything else. Such facts, in aggregate, cannot conceivably overcome the presumption of expatriation established against the appellant by his two years residence in Italy

from 1936 to 1938, but instead, operate to support the presumption. Such facts establish an Italian way of life for the appellant similar to the way the facts in *Cummings v. Isenberg, supra*, established a German way of life for the appellee there, and the way the facts in *Thorsch v. Miller, supra*, established an Austrian way of life for Mr. Thorsch. The facts in the case at bar do not, under any interpretation possibly favorable to the appellant, show a persistency to retain American citizenship such as was shown by Mrs. Zander in *McGrath v. Zander, supra*. Therefore, on the basis of the authorities cited above, and on the testimony at the trial, this Court should rule that a presumption of expatriation arose against appellant under the provisions of the Act of 1907, and also that appellant's conduct since the presumption arose has not been such as can overcome the presumption.

III

The Trial Judge Did Not Commit Reversible Error When He Refused to Admit into Evidence the Whole Content of House Report No. 1469

Appellant in his brief cites authorities which hold that an official legislative report of a congressional committee is admissible in evidence as an exception to the hearsay rule. Appellant's Brief, p. 17. These authorities do not, however, hold that the exclusion of such a report constitutes reversible error. The cases cited by appellant, *Stasiukevich v. Nicolls*, C.C.A., 1st Cir., 168 F. (2d) 474 (1948), and *United States v. Aluminum Company*, C.C.A., 2d Cir. 148 F. (2d) 416 (1945), both expressly state that while congressional reports are admissible in evidence, they are also proper subjects for judicial notice. *United States v. Aluminum Company*, *supra*, through an opinion by Judge Learned Hand, states that such reports may be judicially noticed de novo by the appellate court. The court said:

“Nor is there any reason why in deciding what judgment to direct, it [the appellate court] should not advise itself from outside the record of such facts as appear to admit of no genuine dispute: i.e. should take

'notice' of whatever the district court itself might take 'notice' . . . We may, and we do accept the figures of aluminum production in the report of the so-called 'Truman Committee' as of March 1944 . . ."

Accord: *Wigmore on Evidence*, 1940 Ed., § 2567 (c), Volume IX, p. 536.

If, therefore, this court may take judicial notice of House Report No. 1469, then the exclusion of the report by the final court is not prejudicial to the appellant, and is, therefore, immaterial.

When a court does take judicial notice of a congressional report, however, all authorities unite to warn the court against acceptance of the report as credible. Thus, Professor Morgan in his article "The Law of Evidence, 1941-1945" says of congressional reports:

"Certainly there is nothing in the history of congressional committees and their methods of investigation and publication to warrant any court in holding that their reports are sources of indisputable accuracy. Their existence and content are doubtless proper subject for judicial notice; but the indisputable accuracy of their assertions of fact, never." 59 *Harvard Law Review* 486.

Matter judicially noticed is always rebuttable by evidence introduced by the other party tending to prove the contrary of the facts asserted in the official report. *Stasiukevich v. Nicolls*, supra, p. 479, *Wigmore*, § 2567 (a), Volume IX, p. 535. Testimony at appellant's trial effectively proves that none of the conditions described in the report ever personally affected the appellant. There is no showing that the House report was even based on investigations in appellant's general area of Italy. The report might well describe horrible incidents of torture and duress used in Italy in 1946 to make people vote, but the simple testimony adduced from appellant himself shows that none of these things happened to him. He voted the first time simply because his candidate friend asked for his vote, and the second time because he decided, after lengthy deliberation, that he wanted to vote. He never even heard of the laws which are quoted in the report and were admitted by the trial judge.

It is, therefore, submitted that while House Report No. 1469 is clearly hearsay insofar as the facts of this particular case are concerned, the appellate court may take judicial notice of its content, but in so doing this court is asked to consider that testimony adduced at the trial disproves the relevancy of the House Report to the facts of the instant case.

CONCLUSION

WHEREFORE, for the reasons set forth above, the appellee respectfully requests the court to affirm the judgment of the trial court.

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